UNITED NATIONS AND UNILATERAL MILITARY INTERVENTIONS: ADMISSIBLE JUSTIFICATIONS IN THE UNITED NATIONS' RESPONSES

A Ph. D. Dissertation

by

MÜGE KINACIOĞLU

THE DEPRTMENT OF INTERNATIONAL RELATIONS
OF BILKENT UNIVERSITY
ANKARA

September 2008

To my parents and my sister

UNITED NATIONS AND UNILATERAL MILITARY INTERVENTIONS: ADMISSIBLE JUSTIFICATIONS IN THE UNITED NATIONS' RESPONSES

The Institute of Economics and Social Sciences
of
Bilkent University

by

MÜGE KINACIOĞLU

In Partial Fulfillment of the Requirements for the Degree of
DOCTOR OF PHILOSOPHY

in

THE DEPARTMENT OF INTERNATIONAL RELATIONS
BİLKENT UNIVERSITY
ANKARA

September 2003

I certify that I have read this thesis and have found that it is fully adequate, in scope and in quality, as a thesis for the degree of Doctor of Philosophy in International Relations.

Professor Dr. Ali KARAOSMANOĞLU
Supervisor

I certify that I have read this thesis and have found that it is fully adequate, in scope and in quality, as a thesis for the degree of Doctor of Philosophy in International Relations.

Professor Dr. Yüksel İNAN
Examining Committee Member

I certify that I have read this thesis and have found that it is fully adequate, in scope and in quality, as a thesis for the degree of Doctor of Philosophy in International Relations.

Professor Dr. Aydoğan ÖZMAN
Examining Committee Member

I certify that I have read this thesis and have found that it is fully adequate, in scope and in quality, as a thesis for the degree of Doctor of Philosophy in International Relations.

Associate Professor Dr. Necati POLAT
Examining Committee Member

I certify that I have read this thesis and have found that it is fully adequate, in scope and in quality, as a thesis for the degree of Doctor of Philosophy in International Relations.

Assistant Professor Dr. Mustafa KİBAROĞLU
Examining Committee Member

Approval of the Institute of Economics and Social Sciences

Professor Dr. Kürşat AYDOĞAN
Director

ABSTRACT

UNITED NATIONS AND UNILATERAL MILITARY INTERVENTIONS: ADMISSIBLE JUSTIFICATIONS IN THE UNITED NATIONS' RESPONSES

KINACIOĞLU, Müge

Ph. D., Department of International Relations
Supervisor: Professor Dr. Ali Karaosmanoğlu

September 2003

This study on the United Nations' approach to unilateral military interventions is an analysis of the concept of military intervention in the domestic affairs of states and its normative development in international politics. In this context, the main purpose of the study is to discover the normative trends of legitimization in the organs of the United Nations (Security Council and General Assembly) and to assess the permissible state justifications of military intervention as endorsed by the United Nations. More specifically, it aims to expose the principle of non-intervention to inspection and exception, and inquire the extent of United Nations' contribution to the development of international norms and trends with respect to military intervention in domestic affairs. For this purpose, the primary focus of the study is in general on the stance, and in particular on the decisions and actions taken by the main United Nations organs concerning the legality and legitimacy of military interventions undertaken by a state or group of states in the domestic affairs of another state with reference to individual cases.

Examining the United Nations' responses to individual cases of military intervention, the study finds that the United Nations has consistently declined the

permissibility of unilateral military interventions in circumstances other than those stipulated by the Charter. Thus, the study concludes that the United Nations practice indicates substantial adherence to the Charter scheme regarding the prohibition of the use of force and the principle of non-intervention in internal affairs.

Keywords: United Nations, Military Intervention, Collective Legitimization

ÖZET

BİRLEŞMİŞ MİLLETLER VE TEK TARAFLI ASKERİ MÜDAHALELER: BİRLEŞMİŞ MİLLETLER'İN TEPKİLERİNDE KABUL EDİLEBİLİR HAKLI KILMA GEREKÇELERİ

KINACIOĞLU, Müge

Doktora, Uluslararası İlişkiler Bölümü
Tez Yöneticisi: Professor Dr. Ali Karaosmanoğlu

Eylül 2003

Birleşmiş Milletler'in tek taraflı askeri müdahalelere yaklaşımı konusundaki bu çalışma, devletlerin içişlerine askeri müdahale kavramı ile bunun uluslararası politikadaki normatif gelişiminin bir analizidir. Bu çerçevede çalışmanın temel amacı, Birleşmiş Milletler organlarında (Güvenlik Konseyi ve Genel Kurul), normatif meşrulaştırma eğilimlerini ve askeri müdahalelerin, Birleşmiş Milletler tarafından onaylanmak suretiyle, izin verilebilir haklı kılma gerekçelerini ortaya çıkarmaktır. Daha somut olarak, bu çalışma, müdahalede bulunmama ilkesinin istisnalarını araştırmakta ve Birleşmiş Milletler'in, içişlerine askeri müdahaleye dair uluslararası norm ve eğilimlerin gelişimine katkısını değerlendirmektir. Bu amaçla, çalışma, genel olarak Birleşmiş Milletler'in tavrı, özel olarak ise bir ülke veya ülkeler grubunca diğer bir ülkenin içişlerine askeri müdahalede bulunmanın yasallığı ve meşruluğuna dair başlıca Birleşmiş Milletler organları tarafından alınan kararlar ve atılan adımlar üzerine odaklanmıştır.

Çalışmada Birleşmiş Milletler'in askeri müdahalelere ilişkin tepkileri tek tek incelenerek, Birleşmiş Milletler organlarında, BM Şartı'nda öngörülenlerin dışındaki

tek taraflı askeri müdahaleler için öne sürülen diğer haklı kılma gerekçelerinin benimsenmediği görülmüş; dolayısıyla Birleşmiş Milletler uygulamalarının, içişlerine karışmama ilkesini öngören ve kuvvet kullanımını yasaklayan Şart'a bağlı kaldığı sonucuna varılmıştır.

Anahtar Kelimeler: Birleşmiş Milletler, Askeri Müdahale, Kolektif Meşrulaştırma

ACKNOWLEDGMENTS

In the course of writing this dissertation, I have amassed considerable debts to various professors, colleagues and friends. I must first single out Professor Dr. Ali Karaosmanoğlu, my supervisor, not only for stimulating my interest in the interdisciplinary study of law and politics and the subject of intervention; but for encouraging and guiding me throughout the writing of this thesis. I realize full well how valuable it has been to have such a master architect prepared to consult on each successive draft. I thus express my deepest gratitude to Professor Dr. Ali Karaosmanoğlu for his excellent support, encouragement and illuminating insights.

I would like to present special thanks to all my examining committee members, Professor Dr. Yüksel İnan, Professor Dr. Aydoğan Özman, Associate Professor Necati Polat, and Assistant Professor Mustafa Kibaroğlu for their useful suggestions and comments.

The writing of this work owes a great deal to many colleagues and friends. I would like to extend special thanks to my friends, to Dr. Jennifer Terni for proof-reading parts of this thesis; to Aysun Uyar, Müge Keller, Melih Döngör and Yeşim Gündoğdu for their technical assistance and moral support; to Associate Dr. Aylin Özman, Dr. Emel Osmançavuşoğlu, Ayşe Artun, Dr. Sita Schutt and Gale Johnson for their continuous warm and genuine moral support. I would also like to thank to all my colleagues at Hacettepe University for their support.

Last but not the least, I remain deeply grateful to my parents and my sister, without whose support, this thesis would not be realized. I cannot thank them enough for being always there for me with their unconditional love and infinite patience.

TABLE OF CONTENTS

ABBREVIATIONS

ASEAN	Association of South East Asian Nations
CSCE	Conference on Security and Cooperation in Europe
EC	European Community
ECOMOG	ECOWAS Monitoring Group
ECOWAS	Economic Community of West African States
EU	European Union
FNLA	National Front for the Liberation of Angola
FRY	Federal Republic of Yugoslavia
GA	General Assembly
ICJ	International Court of Justice
IFOR (SFOR)	Implementation Force (Stabilization Force)
INPFL	Independent National Patriotic Front of Liberia
MOU	Memorandum of Understanding
MPLA	Popular Movement for the Liberation of Angola
NATO	North Atlantic Treaty Organization
NPFL	National Patriotic Front of Liberia
OAU	Organization of African Unity
OAS	Organization of American States

OECS	Organization of East Caribbean States
PLO	Palestinian Liberation Organization
RMC	Revolutionary Military Council
RPF	Rwandan Patriotic Front
SC	Security Council
UCK	Kosovo Liberation Army
UK	United Kingdom
UN	United Nations
UNAMSIL	United Nations Mission in Sierra Leone
UNAMIR	United Nations Assistance Mission in Rwanda
UNEF	United Nations Emergency Force
UNFICYP	United Nations Peacekeeping Force for Cyprus
UNITA	National Union for the Total Independence of Angola
UNITAF	Unified Task Force
UNOMIL	United Nations Observer Mission in Liberia
UNOMSIL	United Nations Observer Mission in Sierra Leone
UNOSOM	United Nations Operation in Somalia
US	United States
USSR	Union of Socialist Soviet Republics
WMD	Weapons of Mass Destruction.

UN Documents

A/	General Assembly
A/PV	General Assembly Verbatim Records of Meetings
Doc.	Document
ES	Emergency Session
Res(ols).	Resolution(s)
S/	Security Council
S/PV	Security Council Verbatim Records of Meetings
UNPR	United Nations Press Release
USUN	United States Mission to the United Nations
S/PRST	Statements by the President of the Security Council
SG	Secretary General

INTRODUCTION

The doctrine of non-intervention in domestic affairs is the logical corollary of the principle of state sovereignty. In international relations, it has been considered as the most significant means to cope with the "logic of anarchy" that lies at the heart of international politics, and thus become the main governing rule of state relations. Its main function therefore has come to be the primary safeguard regarding the preservation of order and the peaceful coexistence among states. As a principle, non-intervention first evolved through the writings of scholars beginning from the eighteenth century, and was eventually codified in several treaties and other documents in the twentieth century.

In this context, the United Nations Charter stands as the universal framework that proscribes intervention in the domestic affairs of states. Being the product of the desire to prevent recurrence of the conflicts that had given rise to the Second World War, the UN Charter reflects the concern with the prohibition of the use of force in the relations between states. Accordingly, it aimed to establish a system for maintaining international peace and security through the control of use of force in international relations. Regarding intervention, the Charter enshrines the principle of non-intervention primarily in Article 2, paragraph 7, according to which the United Nations should refrain from intervention "in matters essentially within the domestic

jurisdiction of any state." In addition, there are other provisions in the Charter, particularly concerning the duties of the states and the organization, that suggest the primacy attached to the principle of non-intervention in internal affairs. For example, Article 2(1) stipulates that "the Organization is based on the principle of the sovereign equality of all its Members." For that matter, Article 2(4) requires states "to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state."

Notwithstanding the prevailing norm of non-intervention, the issue of intervention has never ceased to be a recurring phenomenon that international community has had to confront. In the modern history of world politics, the role, character, frequency and methods of intervention varied depending partly on the nature of international system i.e. the structure of power, and partly on the moral foundations of the international society. The prevalence of intervention in world politics led one leading scholar to refer to intervention in the late 1960s as "a central problem of world politics."[1] Similarly, another prominent international relations scholar maintained that intervention was "a ubiquitous feature of modern international relations, perhaps even an inherent feature of it."[2] One other scholar even goes further and equates the subject of intervention with "international politics in general from the beginning of time to the present."[3] Thus, the concept of intervention remains to be "both important and very topical."[4]

---

[1] James N. Rosenau, "Intervention as a Scientific Concept," *Journal of Conflict Resolution* 13:2 (1969), 160.
[2] Hedley Bull, "Introduction" in Hedley Bull (ed.), *Intervention in World Politics* (Oxford: Oxford University Press, 1984), 2.
[3] Stanley Hoffmann, "The Problem of Intervention" in Hedley Bull (ed.), *Intervention in World Politics* (New York: Oxford University Press, 1984), 7.
[4] *Ibid.*

Generally speaking, the distinctive element of intervention is considered to be its coercive nature. In this sense, intervention includes both forcible and non-forcible interference. It comprises a spectrum of political and economic policies as well as military action. Among these, acts of interference involving the actual use of force stands out as the most controversial form of interference with regards to the norm proscribing intervention in the internal affairs, since legitimation of the use of force to affect or change the course of internal affairs is much more problematic.

This study on the UN approach to unilateral military interventions is an analysis of the concept of military intervention in the domestic affairs of states and its normative development in international politics. The problem is not necessarily the law-making process in the UN. Rather, it is the normative trends of legitimization of specific justifications of military interventions in the organs of the UN. Thus, the main purpose of this study is to extrapolate these normative trends of legitimization and to assess the permissible state justifications of military intervention as endorsed by the UN. More specifically, it aims to expose the principle of non-intervention to inspection and exception, and inquire the extent of UN's contribution to the development of international norms and trends with respect to military intervention in domestic affairs. For this purpose, the primary focus will be in general on the stance, and in particular on the decisions and actions taken by the main United Nations organs, namely the General Assembly and the Security Council, concerning the legality and legitimacy of military interventions undertaken by a state or group of states in the domestic affairs of another state with reference to individual cases. As

such, the study investigates the approach adopted by the UN in relation to specific justifications invoked by states undertaking the act of interference.

Given the purpose of the study, it is appropriate to make a few preliminary observations about 'legitimacy' as well as the role played by the UN in legitimization. The notion of legitimacy in this study largely draws on Inis Claude's seminal work on the collective legitimization function of the United Nations. As Inis Claude observes, politics is not only "a struggle for power but also a contest over legitimacy."[5] That is not to imply that power and legitimacy have an antithetical relationship. In fact, legitimacy supplements power, as the "obverse of the legitimacy of power is the power of legitimacy."[6] Thus, actors seek legitimization to bolster their policies. Inis Claude identifies two aspects of the discussions of political legitimacy, namely law and morality. Lawyers are inclined to define legitimacy as a mere translation of 'legality.' Moralists, in a similar way, tend to approach the issue of political legitimacy as a question of moral justification. Claude argues that although both law and morality stand as powerful grounds for legitimization, in the final analysis legitimization is a political process, which is not entirely governed by legal rules and moral principles: "Judges and priests and philosophers usually make themselves heard, but they do not necessarily have the last word."[7] Moreover, he contents that as much as law and morality may reinforce each other in some cases, they may also come into conflict in other cases. Hence, what is significant from this perspective is the agency of legitimization, i.e. who is accepted as "the authoritative

[5] Inis L. Claude, Jr., "Collective Legitimization as a Political Function of the United Nations," *International Organization*, 20:3 (1966), reprinted in Inis L. Claude, *States and the Global System: Politics, Law and Organization* (London: Macmillan Press, 1988), 146.
[6] *Ibid.*

interpreter of the principle" and how the process of legitimization takes place rather than the principles of legitimacy themselves.[8] In other words, principles of legitimacy may change or their application may be uncertain and ambiguous, but what gains greater significance is the nature of the process itself.

In the light of the above presuppositions, the United Nations appear as the most prominent international organization undertaking a function of collective legitimization i.e. setting a hallmark of approval. Although it can be argued that the UN hardly represents the world society, it would be reasonable to assert that it embodies a critical mass of actors. In addition, it is recognized by states as the most respected forum for the representation of global general will. As Claude observes, "its [the United Nations] status as an institution approximating universality give it obvious advantages for playing the role of custodian of the seals of international approval or disapproval."[9]

A few remarks should also be made concerning norms in order to underline the significance of the subject. Norms of legitimacy comprising legal, political and moral elements constitute one of the main determining factors in international politics. They set a "standard of appropriate behavior for actors within a given identity"[10] and they function as constraining and enabling frameworks for state behavior. In this respect, one can question the power of norms in international politics by pointing out the discrepancy between the acceptance of norms in principle and the instances of

---

[7] *Ibid.*, 147.
[8] *Ibid.*, 148.
[9] *Ibid.*, 150.
[10] Martha Finnemore and Kathryn Sikkink, "International Norm Dynamics and Political Change," *International Organization* 52:4 (1998), 891.

their breach in practice. However, whether the actor is genuine or not is beyond the point, for what matters is the need felt by the actor to legitimate its behavior and to take actions compatible with the declared principles. Within the context of military interventions, this assumption would lead one to examine the justifications rather than mix of various motivations for intervention. Despite the conventional approach in the International Relations discipline that would argue that justifications are mere fig leaves for the disguise of self-interests, from the perspective of this study, consistent endorsement of certain justifications is essential in the evolution of standards of behavior of state conduct.

Having established the importance of the study in the context of collective legitimization and norm development, it is also necessary to look at the state of existing literature. As mentioned above, the concept and practice of intervention is a burning issue in international relations, and thus there exist several studies regarding the subject. The studies on the definition of the concept aside, the literature on intervention mainly focuses on normative and empirical implications of intervention and non-intervention in the international relations. On the empirical side, many of the important cases of intervention have been studied at length. Indeed, most of the literature on intervention is limited to historical case studies and/or a great power's interventionary behavior. Among these, there are studies that have looked at the relationship between the pattern of intervention and the structure of the international system. Raymond and Kegley, for example, analyze intervention in relation to cycles of power concentration and deconcentration in the international system.[11] They

[11] G. A. Raymond and C. W. Kegley, "Long Cycles and Internationalized Civil War," *Journal of Politics* 49 (1987), 481-499.

examine interventions in civil wars in the period between 1816 and 1980. Most of the post-Cold War studies of interventions focus on specific cases of intervention such as Liberia, Bosnia, Somalia, Haiti, Rwanda and Kosovo, or great power policies. In that respect, Richard N. Haas in *Intervention, The Use of American Military Force in the Post-Cold War World*, scrutinizes the debate on the use of military forces within the United States and looks at the recent cases of US intervention.

In addition to the body of empirical research, there are also sizeable number of normative studies of questions relating to intervention and non-intervention. In this respect, the most celebrated account of the development of non-intervention as a principle, doctrine and practice is R. J. Vincent's *Nonintervention and International Order* (1974), which examines the doctrines of non-intervention held by individual states and groups of states, and analyzes the function that the principle fulfills in the international system and its contribution to international order. One other notable normative work that traces the doctrines of intervention and non-intervention is Thomas and Thomas's *Non-Intervention, the Law and Its Import in the Americas* (1956). On the other hand, some studies focus on the tension between the non-intervention principle and the growing concern about the violation of human rights. In his book, *Humanitarian Intervention: An Inquiry into Law and Morality* (1987), Teson argues that the conception of international law should be reformulated with a view to take into consideration the major dilemma between absolute adherence to the principle of non-intervention and promotion of human rights. Addressing the same question, Walzer, in *Just and Unjust Wars: A Moral Argument With Historical Illustrations* (1977), contends that unless there are extreme cases where massacre, genocide or enslavement is involved, intervention cannot be justified. Other recent

studies in the concept and practice of humanitarian interventions, and normative dilemmas involved, include, among others, Francis Kofi Abiew's *The Evolution of the Doctrine and Practice of Humanitarian Intervention* (1998); Stephan A. Garrett's *Doing Good and Doing Well, An Examination of Humanitarian Intervention* (1999) and Nicholas Wheeler's *Saving Strangers, Humanitarian Intervention in International Society* (2000).

As to the inquiries of the United Nations and intervention, the studies generally center on the operational functions of the organization such as its programs in various areas or individual/general peacekeeping missions. With respect to the UN and military interventions, studies are also mostly limited to individual cases or to interventions with specific purposes. Most prominent recent work in that respect is Sean Murphy's *Humanitarian Intervention, the United Nations in an Evolving World Order* (1996). On the other hand, there are also studies, which scrutinize the issues arising out of UN's involvement in internal conflicts. One significant work that investigates the question of international organizations' competence in the resolution of internal conflicts within the context of principle of non-intervention in domestic affairs is Ali Karaosmanoglu's book, *İç Çatışmaların Çözümü ve Uluslararası Örgütler* (Resolution of Internal Conflicts and International Organizations) (1981). Among more recent studies regarding the UN's participation in specific interventions. are *Enforcing Restraint, Collective Intervention in Internal Conflicts* edited by Lori Fisler Damrosch (1993); *The UN Security Council and Human Rights* by Sydney D. Bailey (1994); *Beyond Traditional Peacekeeping* edited by Donald C. F. Daniel and Bradd C. Hayes (1995); *The United Nations and Civil Wars* edited by Thomas G. Weiss (1995); *The New Interventionism, 1991-1994, United Nations*

Experience in Cambodia, Former Yugoslavia and Somalia edited by James Mayall (1996); *The UN, Peace and Force* edited by Michael Pugh (1997). Finally, there are general international law studies concerning the use of force and the United Nations, such as *International Law and the Use of Force, Beyond the UN Charter Paradigm* (1993) by Anthony Clark and Robert J. Beck, and *Uluslararası Hukukta Kuvvet Kullanma: Savaş, Karışma ve Birleşmiş Milletler* (The Use of Force in International Law: War, Intervention and the United Nations) (1998) by Funda Keskin.

From this brief survey of literature, it appears that the legitimization function of the United Nations and its consequent role in the development of the normative fabric of international society are often overlooked in the political analyses of the United Nations and intervention. Since examination of the UN participation in isolated cases of military intervention would not display the trends in the normative development, in order to discern the cumulative impact of repeated endorsement of a specific position, the challenging task remains to be the conduct of a comprehensive and systematic study of the UN reactions to military intervention in domestic affairs as manifested in the General Assembly and the Security Council since its inception. By filling this gap with such research, this study intends to contribute significantly to the international relations literature on the subject of intervention.

The scope of the study is limited to unilateral military interventions. Given the main purpose of this study as the determination of the normative trends in the legitimization of the justifications of military interventions by the United Nations, the UN reactions to all military actions fulfilling the working definition of intervention in the study are considered. The term 'unilateral' in this study is similar

to its use by international lawyers as opposed to its use by most social scientists. Whereas the latter employ the term to denote a decision or action by a single state, the former use the term to refer to 'non-authorized' action and thus of uncertain legality regardless of the number of states that have undertaken that action. Since the center of attention in this study is the rationalization and acceptability of the military intervention rather than the mix of the various motivations behind it, unilateral interventions will be examined on the basis of justifications of the intervening state and the subsequent reaction of the UN. In order to discern the general tendencies of the UN and their subsequent contribution to the evolution of normative fabric regarding intervention, the time frame it covers comprises both the Cold War period and the post-Cold War era. The study, however, does not make a distinction between Cold War and post-Cold War periods, as it is concerned with investigation of continuity/discontinuity in the UN reaction towards particular justifications regardless of the systemic changes.

As such, the study starts its research from 1956 Soviet intervention in Hungary. The reason for this is the assumption that any evaluation of the normative tendencies in the UN reaction could be revealing after mid-1950s, since it is then onwards that the UN membership had attained an adequate level of universality.[12] This study, however, does not extend the analysis to the military interventions undertaken after September 11 incident, though they have revitalized the debate on military intervention in domestic affairs. Although the subsequent interventions, most notably the US military action against Iraq in March 2003, appears to have brought about

new political and moral justifications for military intervention, such as the regime change and the prohibition of the WMD proliferation, it would be too premature to conclude that it has substantially changed the normative framework regarding intervention. In other words, it is too early to decide whether the US justifications raised for military intervention in the aftermath of September 11 will be employed by other states as legal grounds for defending their future interventions or they will remain representing an exceptional case. In this sense, the analysis of UN reaction to these cases will not yet demonstrate a certain UN trend regarding those particular justifications, and will be limited to 'describing' only the UN reaction to September 11 related instances of intervention. Thus, for the purposes of the study, these interventions are not considered in the present research.

A final note should be made with regards to the limitation of the subject matter. The study concerns military interventions in the 'domestic affairs' of a recognized sovereign state. Hence, interstate aggression and the subsequent responses are out of the confines of this study. For example, the case of Iraq is considered in terms of the collective measures taken as a response to its repressive policies to its own ethnic and religious groups, namely Kurds and Shi'ites, rather than with respect to the US-led military campaign in response to its invasion of Kuwait.

Within the context of the purpose and the scope of the present study, three general hypotheses arise:

[12] The United Nations had 60 members between 1950-1954. In 1955, the membership reached 76, and in 1956, it increased to 81.

- By consistently endorsing the justifications other than those provided in the Charter, the United Nations reactions to individual cases of unilateral military intervention have made the prohibition of the use of force and the principle of non-intervention in internal affairs laid down in the UN Charter futile. Thus, the UN practice represents a complete break with the Charter framework regarding these rules.

- By consistently approving certain justifications other than those provided in the Charter, the United Nations reactions to individual cases of unilateral military intervention have introduced exceptions to the ban on the use of force and principle of non-intervention in internal affairs other than those provided in the UN Charter. As a result, the UN practice suggests the adaptation of the Charter framework regarding these rules.

- By consistently declining the permissibility of unilateral military interventions in circumstances other than those stipulated by the Charter, the United Nations reactions to individual cases of unilateral military intervention have abided by the exceptions explicitly laid down in the UN Charter. Therefore, the UN practice indicates complete adherence to the Charter scheme regarding the prohibition of the use of force and the principle of non-intervention in internal affairs.

In order to test these hypotheses, the study is divided into three parts. The first part examines the conceptual and legal framework of the study. It first discusses the concept of intervention with an emphasis on its specific aspects and provides a

historical overview of state interventions. It then analyzes the rule of non-intervention at the United Nations by looking at the relevant provisions of the Charter, the exceptions stipulated by the Charter, and the General Assembly resolutions. Within this framework, the study moves on to the analysis of UN reactions to the specific justifications invoked by states. In this context, the second part scrutinizes the exceptions contained in the rule of non-intervention, namely self-defense and consent of the target state, as justifications of military interventions. The third part, on the other hand, focuses on other justifications that have been raised, which are not explicitly laid down by the Charter, and discusses the UN reactions to such interventions. These justifications comprise self-determination, protection of nationals abroad and intervention for humanitarian ends. The military interventions defended on humanitarian grounds are distinguished from the first two by their association with "general interest." Because this aspect raises additional questions of UN involvement within the context of its main purposes -maintenance of peace and security and promotion of human rights-, and its interference in domestic affairs, humanitarian intervention is examined under a separate chapter. For assessing UN's application of the norm of non-intervention in the context of specific justifications for military intervention, the chapters under Part II and Part III first analyze the position of the justification in question within general international law and the UN Charter with special attention to interpretative legal contentions, if any, then provides the state views and the UN responses regarding the justification in question. Finally, in the light of the findings of Part II and Part III, the conclusion provides an overall assessment of the UN's interpretation and application of the principle of non-intervention in domestic affairs in general and of the permissible grounds of intervention in particular within the framework provided by Part I of the study.

PART I

THEORETICAL AND LEGAL FRAMEWORK

CHAPTER I:

INTERVENTION: CONCEPTUAL FRAMEWORK AND HISTORICAL OVERVIEW

One of the common observations of scholars about intervention is that there is no precise and generally acknowledged definition of the term. Rather, the concept is used in a vague way and considered to include a diverse range of activities. This is partly due to the ambiguous nature of intervention, that is, the difficulty in distinguishing it from everyday interactions between states. One of the most quoted observations in this regard is the nineteenth century French statesman Talleyrand's claim that there is practically no difference between intervention and non-intervention. Furthermore, the complexity of the concept also stems from the interplay of the main constitutive elements of international relations, namely power,

self-interest, international law and morality, in the act of intervention. Thus, it can be argued that intervention is a gray area where different forces and elements of international politics meet in varying degrees. Indeed, the literature on the concept is so unclear that James Rosenau has observed that writing on intervention seems to be taken by some as "a licence for undisciplined thought."[1]

On the other hand, the concept of intervention usually defined as the breach of sovereignty and encroachment of independence in international law has remained the accepted formula of intervention since the eighteenth-century. The prevailing norm is the rule of non-intervention as implied by the state system based on the principle of sovereignty and equality.[2] In other words, the norm proscribing intervention in the internal affairs of states has come to represent the flip side of the norm upholding sovereignty.[3] Hence, traditional legal understanding conceives intervention in normative terms and regards it as a deviation from the recognized norm of non-intervention. Nevertheless, an overview of state relations in the nineteenth century shows that intervention was a common feature of international affairs and an instrument of statecraft.

This chapter aims to give a general presentation of the concept of intervention, sketch out the historical antecedents of the principle of non-intervention, and review the practice of intervention prior to the United Nations Charter. Given the ambivalent and complex nature of intervention, the discussion of this concept focuses on its various

[1] James Rosenau, "The Concept of Intervention," *Journal of International Affairs* 22:2 (1968), 173.
[2] Seha L. Meray, *Devletler Hukukuna Giriş, İkinci Cilt (Introduction to International Law, Vol. II)* (Ankara: Ankara Üniversitesi Basımevi, 1965), 394.

components in order to avoid confusion and provide a basis for developing a working definition of intervention in this study. A historical appraisal of the idea of non-intervention will illuminate how it was articulated as a principle and doctrine, and inquire why it was deemed to be a requirement of international conduct in the writings of major classical legal scholars and political thinkers. Finally, the examination of the particular representative cases of state practice in the nineteenth century and early twentieth century intends to shed light on how the idea of non-intervention was reflected in interstate relations, and more precisely, the extent to which it guided state behavior as a rule.

1. 1. DEFINITION AND CONCEPT OF INTERVENTION

1. 1. 1. Intervention Defined

Since the end of the nineteenth century, primarily international law scholars have taken up the task of crafting definitions of interventions. Within the literature of international relations, on the other hand, intervention is analyzed and classified with respect to its types and forms, rather than conceptualized and specifically defined. For the purpose of distinguishing intervention from the interplay of different forms of power in international politics, it is necessary to delimit the concept and examine its major components.

---

[3] Anne-Marie Slaughter Burley and Carl Kaysen, "Introductory Note: Emerging Norms of Justified Intervention" in Laura W. Reed and Carl Kaysen (eds.), *Emerging Norms of Justified Intervention*

1. 1. 1. 1. Intervention as a Type of Activity

One way of drawing the boundaries of intervention is by reference to the type of activity it involves. Literally speaking, intervention is any act of "interference in any affair" with the aim of affecting its direction or outcome.[4] Within the context of state relations, in his article "Intervention as a Scientific Concept," Rosenau concludes that many observers define intervention as "any action whereby one state has an impact upon the affairs of another."[5] This definition suggests that "every act of a state constitutes intervention."[6] In this respect, several scholars have contended that intervention is always present and inevitable in international politics, and more specifically, constitutes an inherent feature of international relations. For example, Weiss equates intervention with the practice of international relations, "which by definition consists of efforts by governments to influence the behavior of other states."[7] In its widest interpretation then, intervention becomes a catch-all phrase, and may refer to any foreign policy conduct.[8] From this perspective, even an official communication concerning an action of one state might count as intervention.[9]

(Cambridge, MA: American Academy of Arts and Sciences, 1993), 13.

[4] R. J. Vincent, *Nonintervention and International Order* (Princeton: Princeton University Press, 1974), 7.

[5] James N. Rosenau, "Intervention as a Scientific Concept," *Journal of Conflict Resolution* 13:2 (1969), 153.

[6] Stanley Hoffmann, "The Problem of Intervention" in Hedley Bull (ed.), *Intervention in World Politics* (New York: Oxford University Press, 1984), 7-8.

[7] Thomas G. Weiss, "Humanitarian Interventions in a New Era," *World Policy Journal* 11:1 (1994), 59.

[8] Gene M. Lyons and Michael Mastanduno, "Introduction: International Intervention, State Sovereignty, and the Future of International Society" in Gene M. Lyons and Michael Mastanduno (eds.), *Beyond Westphalia? State Sovereignty and International Relations* (Baltimore: The Johns Hopkins University Press, 1995), 10.

[9] Ann Van Wyen Thomas and A. J. Thomas, Jr., *Non-intervention, The Law and Its Import in the Americas* (Dallas: Southern Methodist University Press, 1956), 68.

Notwithstanding these broad interpretations, in scholarly discourse as well as in state conduct, the term intervention generally came to label the foreign attempts to influence domestic or external affairs of states. Early in the twentieth century, the well-known jurist Oppenheim qualified the act of interference by underlining its dictatorial nature. According to this view, intervention comprises those acts which constitute "dictatorial interference by a state in the affairs of another state for the purpose of maintaining or altering the actual condition of things."[10] This understanding of intervention goes beyond endeavors seeking to influence others' actions. In other words, it excludes regular power relationships in world politics. Instead, the emphasis on the dictatorial nature of intervention presumes a notion of coercion. As Beloff observes, intervention is an attempt by one state aiming to "affect the internal structure and external behavior of other states through various degrees of coercion."[11] In this sense, intervention involves the activities that impair a state's external independence or territorial authority by imposing a certain order of things on a state without its consent.

Within this context, scholars differ on whether coercion implies merely the use of force or also the threat of such force. On the one hand, some argue that differences in power may always involve an implicit threat of force in any relationship between a great and a small power. For example, Vincent maintains that identifying acts as intervention on the basis of coercion may be too inclusive, since a lesser power may claim any act of interference by a great power as coercive because of the "implicit

[10] Hersch Lauterpacht (ed.), *L. Oppenheim, International Law: A Treatise, Vol. I – Peace* (London: Longmans, Green & Co., 1955), 305. For a similar definition, see Meray, *Devletler Hukukuna Giriş*, 395.
[11] Max Beloff, "Reflections on Intervention," *Journal of International Affairs* 22:2 (1968), 198.

threat of force which a powerful state can hold over a weak state."[12] On the other hand, some writers claim that coercion need not entail the utilization of force. For example, Castel holds that "it is the coercive nature of an act of interference which makes that act intervention, whether the act in question involves the use of force or merely economic and political pressure." The key aspect, he notes, is the intention of the intervening state "to coerce the sovereign will of the other state."[13] Similarly, Thomas and Thomas contend that the implication of force in definitions of intervention narrows the subject too much, and leaves out acts of interference of political and economic nature.[14] In addition, they argue that such a restricted approach is not only inaccurate, but also dangerous, for "it excuses various types of interference that have often occurred."[15] Similarly, Vincent notes that confining 'intervention' to those activities that utilize or threaten force may also become too exclusive, since it might "fail to capture the reality of dictatorial behavior in spheres like that of international economic relations."[16] In a comparable fashion, Hoffmann also maintains that coercive activities that count as intervention need not involve force and may not entail a clear dictatorial interference; yet, may still constitute intervention to the extent that they aim to force an actor to do something which it would not do otherwise.[17] Hence, according to him too, delimiting the definition of intervention in terms of acts of dictatorial interference involving force would be reductive and misleading.

---

[12] Vincent, *Nonintervention,* 8. For a similar idea, see Ernst B. Haas, *Beware the Slippery Slope: Notes Toward the Definition of Justifiable Intervention,* Policy Papers in International Affairs No. 42 (Berkeley: University of California, 1993), 6-7.
[13] J. G. Castel, *International Law* (Toronto: Butterworths, 1976), 55.
[14] Thomas and Thomas, Jr., *Non-intervention,* 68.
[15] *Ibid.,* 69.
[16] Vincent, *Nonintervention,* 8.

In line with the conceptions of intervention just reviewed, Hedley Bull defines intervention as "dictatorial or coercive interference in the sphere of jurisdiction of a sovereign state, or more broadly of an independent political community." Arguing that intervention is not a single course of action, he states that:

> "Intervention in this sense may be forcible or non-forcible (as when it takes the form of economic coercion). It may be direct or indirect (as when a major power uses a minor power as its agent or proxy). It may be open or clandestine (as when the instruments being employed are under the control of secret intelligence agencies)."[18]

Bull emphasizes that a "basic condition" for any action to be called interventionary is that the intervening actor be superior in power to the target of intervention. In his view, the question of "dictatorial or coercive" interference stems from the relative superior strength of the intervenor vis-à-vis the target.[19]

One other significant discussion of intervention in the literature is Rosenau's attempt to operationalize the concept of intervention. During the 1960s' behavioral approach to international relations, Rosenau argued that intervention was distinguished from other types of state activity by two characteristics. First, it represents a clear break with the prevailing pattern of relations between the intervening and target states; and second, it is essentially directed to either change or preserve the structure of political authority in the target state.[20] Thus, as expressed by Rosenau, the two defining attributes of intervention are its characteristics of being "convention-breaking" and

---

[17] Stanley Hoffmann, "The Problem of Intervention," 9-10.
[18] Hedley Bull, "Introduction" in Bull (ed.), *Intervention in World Politics*, 1.
[19] *Ibid.*
[20] Rosenau, "The Concept of Intervention,"167; Rosenau, "Intervention as a Scientific Concept," 161.

"authority-oriented." Consequently, despite the fact that it is a recurrent feature of international politics, each intervention is a distinct action.[21]

As such, with respect to the type of activity, common to the traditional conceptions of intervention in the literature is the idea that intervention covers a wide range of acts intended to change or maintain state behavior in a particular issue area. However, the most important aspect in qualifying an act of interference as intervention seems to be the existence of compulsion or threat, "whether by armed force or by diplomacy, whether concealed or open, whether direct or indirect."[22]

1. 1. 1. 2. Intervention Defined by Reference to the Type of Actor

Interventions are also distinguished by reference to the nature and number of actors that carry them out. The intervening party may be one single state or a group of states. In addition, regional or universal international organizations may also be possible intervening actors.[23] In some views, the actor may also be a business corporation or a political party, to the extent that they are supported by a state or act on behalf of a state.[24]

An alternative classification of interventions with respect to the type of actor is the distinction between unilateral and multilateral interventions. In this respect, the key difference is often considered to be the legitimacy factor. Generally speaking, unilateral intervention is believed to serve the self-interest of the power that

[21] Vincent, *Nonintervention*, 8.
[22] Thomas and Thomas, Jr., *Non-intervention*, 69.

undertakes the intervening. In addition, intervention by one state is also assumed to upset the existing balance of power among states. For these reasons, unilateral intervention is generally "an activity that is not socially approved within the modern international community."[25] By contrast, collective intervention is usually authorized by an international organization, and thus enjoys a wider basis for legitimacy. It also differs from unilateral intervention with respect to its aims. As opposed to advancing one individual state's own interests, collective intervention is undertaken for collective purposes, such as restoring peace, preserving the status quo, the prevention of power rivalries among states or reinstating humanitarian values.[26] In this sense, collective intervention is generally regarded as having a positive function in promoting the common good. As a result, it often possesses a certain degree of legitimacy, which is hardly ever attributed to unilateral intervention.

1. 1. 1. 3. Intervention Defined in Relation to the Target

It is conventionally accepted that the target of intervention, i.e. the one against whom intervention is directed, is a sovereign state. However, the question in this respect remains to be the domain targeted by the intervention. In this respect, scholars usually identify two broad categories, namely the internal affairs of a state and its external activities. By external activities, it is referred to the foreign relations of a sovereign state, while the internal affairs imply the domestic arrangements and internal developments of a state.

---

[23] Vincent, *Nonintervention,* 4-5.
[24] Hoffmann, "The Problem of Intervention," 10.

Some writers contend that intervention may target either or both. For example, Bull argues that the target of intervention is the jurisdiction of a sovereign state, whereby "the jurisdiction that is being interfered with can be a state's jurisdiction over its territory, its citizens, its right to determine its internal affairs or to conduct its external relations."[27] Likewise, Brierly confines intervention to those "acts of interference either in the domestic or the foreign affairs of another state, which violate that state's independence."[28] Vincent echoes the view that the separation between 'external' and 'internal' is useful in depicting the boundaries of intervention, although he notes that the distinction may sometimes be blurred due to the changing nature of the conception of "domestic affairs".[29]

On the other hand, some scholars maintain that there exists no valid distinction between internal and external affairs. Since intervention targets a sovereign state, it is essentially directed at the independence of a state, which is made up of both external and internal independence. In other words, internal and external independence are part of the same crucial rule of 'independence.' Thus, the key reference with regards to the destination of intervention is a state's independence.[30]

Yet, there are other writers who argue that the concept of intervention should be restricted to those acts of interference only in the internal affairs of states. For example, Hoffmann proposes to confine intervention to "acts aimed at affecting the

---

[25] Evan Luard, "Collective Intervention" in Bull (ed.), *Intervention in World Politics*, 157.
[26] *Ibid.*, 158-159.
[27] Bull, "Introduction," 1.
[28] J. L. Brierly, *The Law of Nations, An Introduction to the International Law of Peace* (London: Oxford University Press, 1942), 247.
[29] Vincent, *Nonintervention*, 5-6.
[30] Thomas and Thomas, Jr., *Non-intervention*, 70.

domestic affairs of the state."[31] The rationale of this limitation, he explains, is two-fold: Because intervention either aspires to control the state itself, or because impinging on domestic affairs is considered to be "the best way of influencing the external behavior of a state."[32]

1. 1. 1. 4. Types of Intervention

Interventions may take different forms, and are usually classified by the type of acts involved in the interference. In this context, scholars first underline that intervention should be distinguished from war. Thomas and Thomas, for example, point out that intervention should not be classified as war in cases where force is employed. They argue that the difference between intervention by force and war depends on the intent of the intervening state and the consent of the state intervened.[33] It is intervention, not war, they explain,

> "If the intervening state, despite its hostile conduct, intends the continuance of uninterrupted peaceful relations, and further if the state intervened acquiesces in that attitude by failing to declare war."[34]

On the other hand, in most analyses, intervention is generally located along a range of activities, with violation of international frontiers at the one end, and sheer diplomatic pressure at the other. At one extreme lies the military intervention, i.e. intervention by force. Pearson defines foreign military intervention as follows:

> "Foreign military intervention is defined as the movement of troops or military forces by one independent country, or a group of countries in concert, across the border of another

[31] Hoffmann, "The Problem of Intervention," 10.
[32] *Ibid.*, 10-11.
[33] Thomas and Thomas, Jr., *Non-intervention,* 73.
[34] *Ibid.*

> independent country (or colony of an independent country), or actions by troops already stationed in the target country."[35]

Vincent extends the definition of military intervention to include military aid as well, and qualifies it with certain purposes. He maintains that military intervention takes place "when troops are dispatched to keep order or to support a revolution in a foreign state, or when military aid is given to a government whose internal position is insecure or which is in conflict with a neighboring state."[36]

Within the broad spectrum of instruments of intervention, the other types of intervention most often referred to are economic and political interventions, although these types of interventions do not always satisfy Rosenau's definitional formula of "authority-breaking," i.e. directly aiming to change the authority structure. While economic intervention includes economic pressure such as trade and credit sanctions, boycotts, embargoes; political intervention encompasses measures like subsidies and aid to revolutionary groups, to opponents of a regime, or to shaky governments and implicit activities such as bribery and propaganda campaign.[37]

Alternatively, distinctions in the types of intervention are also made with respect to the purpose of intervention. The aim of intervention connotes the desired end. In the history of interventions, it is possible to distinguish various patterns according to the purposes envisioned as resulting from the interventions.[38] Nevertheless, a general

---

[35] Frederic S. Pearson, "Foreign Military Interventions and Domestic Disputes," *International Studies Quarterly* 18:3 (1974), 261.
[36] Vincent, *Nonintervention*, 9.
[37] Hoffmann, "The Problem of Intervention," 9-10. For acts under economic and political interventions, see also, Haas, *Beware the Slippery Slope*, 7-8.
[38] Martin Ortega, for example, distinguished ten patterns of military intervention: imperialistic, colonial, balance of power, ideological, self-determination, self-defense, Cold War pattern of intervention, humanitarian intervention, collective intervention, punitive intervention. Martin Ortega,

classification is often made between interventions for the purpose of maintaining balance of power, interventions carried out for ideological reasons, and interventions for humanitarian interests.[39] It might seem that the classification of interventions on the basis of purposes in fact introduces little input for defining intervention. However, from international law perspective, the distinction is considered to be pertinent in the assessment of the legality of interventions. Grouping interventions with respect to purposes does, however, involve certain difficulties. To begin with, an intervention may have a combination of different purposes, which makes the task of fitting the intervention into one category problematic. Another difficulty involved in such a classification emanates from the possible discrepancy between the declared purpose and the real motives of the intervening state. In other words, the official justification of an intervention may often be challenged as being a cover for the real intentions of the intervener.

From the above analysis of definitions of intervention with reference to its various aspects, one may deduce that intervention occurs when a state or group of states - whether acting as a coalition or under the authority of an international or regional organization- interferes in the external or internal affairs of another state against its will, to compel that state to do an act which it would not do in the absence of such coercion, with the aim of maintaining or altering particular conditions or behavior of the target state.

Military Intervention and the European Union, Chaillot Paper 45 (Paris: Institute for Security Studies, 2001), 5-7.

[39] See for example, Vincent, *Nonintervention*, 11.

Most notably, four conditions appear to characterize an act as intervention. First, the target state must be widely acknowledged as sovereign. Unless the object of the intervention is recognized as a sovereign state enjoying the right to non-interference, the act would not constitute an intervention violating state independence. Second, intervention comprises acts intended to influence the internal affairs of a state, rather than designed to annex or conquest that state. There are degrees of pressure in the act of interference. However, it differs from military confrontation, whose aim is to take over a state indefinitely. An intervention is for a defined and transitional period. Thus, although intervention embraces the risk of escalation, it is a "temporary and finite phenomenon."[40] Third, an act is considered intervention when the target state resists it. In other words, if the act is invited or agreed upon, it becomes the provision of support to a willing state, and thus will not qualify as a case of intervention. Fourth, not all types of influence qualify as intervention. In this respect, the influence of economic, foreign and other policies of some or one state on the lives of the citizens of other state(s) will not classify as interference, for the reason that intervention implies an anticipated and direct influence rather than involuntary and minor impact.[41]

1. 1. 2. Working Definition of Intervention in this Study

Taking into account the above survey of the conventional definitions of intervention, it is necessary to select the characteristics that will define intervention to enable the

[40] Rosenau, "The Concept of Intervention,"167.

[41] For a detailed elaboration of the conditions to be satisfied for an act to be counted as an intervention, see Bhikhu Parekh, "Rethinking Humanitarian Intervention," *International Political Science Review* 8:1 (1997), 53-54.

systematic examination and interpretation of the questions under scrutiny in this study.

For the purposes of the present research, drawing mainly upon the definitions of Rosenau and Bull, this study defines intervention as the coercive interference of an external agency, whether a state, a group of states or an international body, in the internal affairs of another state in a manner that disturbs the conventional pattern of their relations, with the aim of rearranging its domestic political order, including its authority structure and domestic policies, in a particular fashion. Although intervention defined in terms of these aspects need not involve the use of armed force, this study limits its research to interventions undertaken as unsolicited acts of military interference in a sovereign state's conduct of internal affairs. Following Pearson's definition, military intervention is taken to be the organized physical transgression of the borders of a recognized state. Therefore, in this study the key guides to the incidence of intervention are the use of force and the conception of intrusion in domestic affairs.

Notwithstanding the prevalence of the incidents of intervention, under international law, it is firmly established that interference in the domestic affairs of other states is an illegal act. Consequently, whether defined broadly or narrowly, the debate on intervention in the scholarly literature has sought to discern exceptions to the rule of non-intervention. Thus, in order to grasp the phenomenon of intervention, it is necessary to examine the idea of non-intervention as it evolved through the most rewarding writings of legal scholars as well as political thinkers.

1. 2. LEGAL AND POLITICAL PRECURSORS OF NON-INTERVENTION AS A DOCTRINE AND PRINCIPLE

Having defined intervention, non-intervention can be said to be the condition in which intervention does not take place.[42] At the outset, it should be underlined that non-intervention as a concept is intrinsically related to the theory of sovereignty, and thus, as a rule emanates from the norm of sovereignty. It provides a standard in state behavior, an obligation of refraining from interference in each other's affairs.[43] Hence, before contemplating the development of the rule of non-intervention in the writings of legal scholars and political philosophers, a few remarks should be made concerning the linkage between the norm of sovereignty and the principle of non-intervention.

1. 2. 1. Non-intervention as a Derivative Principle of the Norm of Sovereignty

Sovereignty is the idea that "there is a final and absolute political authority in the political community" and that "no final and absolute authority exists elsewhere."[44] Translated to the international context, sovereignty is "a political entity's external recognized right to exercise final authority over its affairs."[45] In this sense, sovereignty represents the "institutional expression of the freedom of groups

[42] Vincent, *Nonintervention,* 13.
[43] One should note that beyond its description as a rule, non-intervention itself can be a policy, in situations where a state chooses not to intervene when it could do otherwise. However, this study is concerned with non-intervention as a rule, a principle to which all states are obliged to observe in their relations with one another.
[44] F. H. Hinsley, *Sovereignty* (New York: Basic Books, 1966), 26.
[45] Thomas Biersteker and Cynthia Weber (eds.), *State Sovereignty as Social Construct* (Cambridge: cambridge University Press, 1996), 2.

politically organized as states."[46] Hence, as opposed to the implied hierarchical system of domestic rule, in international relations sovereignty signifies equality and independence in terms of both domestic affairs and international activity. In other words, in the international arena, sovereignty entails the antithesis of the very concept applied to a single community. While in one particular community sovereignty refers to absolute power, in the context of more than one political community, it is based on the presumption that there exists no supreme authority over and above the communities. One prominent scholar states that this is the logical outcome of the nature of sovereignty:

> "...a state which claims to be free of limit and control within its community bound in logic to concede the same freedom to other states in theirs."[47]

Thus, sovereign status not only ensures freedom from external interference but also, by logical implication, imposes on the state the obligation of non-intervention in the boundaries of another sovereign state. In this sense, non-intervention is the twin concept of sovereignty. As Axtmann and Grant observe, "sovereignty within is thus premised on non-interference from without."[48] As a result, it can be said that the essential function of non-intervention is to sustain state sovereignty. More precisely, the principle of non-intervention stands as the fundamental principle that accommodates plurality and diversity of political organization in the international society, and thereby plays the key role in ensuring co-existence of sovereign states.

---

[46] Robert Jackson, "Sovereignty in World Politics: A Glance At the Conceptual and Historical Landscape," *Political Studies* 47:3 (1999), 455.
[47] Hinsley, *Sovereignty*, 158.
[48] Roland Axtmann and Robert Grant, "Living in a Global World: Globalization and the Future of Politics" in Trevor C. Salmon (ed.), *Issues in International Relations* (London: Routledge, 2000), 32.

1. 2. 2. Intellectual Roots of Non-Intervention

The origin of the doctrine of non-intervention in general international law may be traced to the writings of classical publicists of the modern law of nations. Among the major legal scholars articulating the relations between states was Hugo Grotius (1583-1645), who is generally considered to be the founding father of modern international law. In his writings, there is no direct reference to the principle of non-intervention. His point of reference was war as opposed to intervention. According to Grotius, there was either war or peace -with no other intermediate condition-, and thus all acts of violence against another state constituted war.[49] As a result, he questioned whether war was justified when waged for the defense of the oppressed subjects of another power.[50] In his major work, *On the Law of War and Peace*, Grotius noted that according to natural law, resort to war for a just cause was lawful. To him, just causes included defense against an injury, restoration of legality and punishment of a misbehaving state.[51] Furthermore, he argued that sovereigns had the right to punish other sovereigns in cases where a ruler had treated his subjects wrongly. Because he believed the subjects of international law were not only states but also individuals, he postulated that a sovereign was responsible for the welfare of both of its own subjects as well as of others.[52] Thus, although he maintained a strong emphasis on the subjects' obedience to sovereign authority and denied people the right to punish their own rulers, for Grotius, resorting to war on behalf of the

[49] Thomas and Thomas, Jr., *Non-intervention*, 5.
[50] Hugo Grotius, Seha L. Meray (trans.), *Savaş ve Barış Hukuku* (De Iure Belli Ac Pacis / On the Law of War and Peace) (Ankara: Ankara Üniversitesi Basımevi, 1967), bk. 2, chp. 25, para. 8, 171.
[51] *Ibid.*, 52.
[52] Hedley Bull, "The Grotian Conception of International Society" in Herbert Butterfield and Martin Wright (eds.), *Diplomatic Investigations* (London: George Allen & Unwin, 1966), 64.

mistreated subjects under an oppressive ruler was "a right vested in human society"[53]. However, Grotius also warned that this type of military intervention "may often be used as the cover of ambitious designs."[54] Grotian conception of intervention or the use of force presupposed the existence of an international society between sovereign states with strong solidarity,[55] a notion which later served as the key assumption for scholars who later developed the principle of non-intervention.

The principle of non-intervention was first clearly stated in the writings of Wolff and Vattel. Building on the theories of natural law with respect to the independence and equality of states, they both renounced intervention in mutual relations between states. Wolff argued that:

> "To interfere in the government of another, in whatever way indeed that may be done is opposed to the natural liberty of nations, by virtue of which one nation is altogether independent of the will of other nations in its actions."[56]

He further underscored that no such right of interference existed, even though the less powerful may at times be forced to "yield at length to the more powerful."[57] According to him, intervention breaches the right of the state intervened.[58] Thus, he contended that "a state has an absolute right not to allow any other nation to interfere in any way in its own government."[59] Wolff's conception of international law was

---

[53] Grotius, *Savaş ve Barış Hukuku*, 171.
[54] *Ibid.*
[55] Bull, "The Grotian Conception of International Society," 52.
[56] Christian Wolff, Joseph H. Drake (trans.), *Jus Gentium Methodo Scientifica Pertractatum* (New York: Oceana Publications Inc., 1964), chp. 1, para. 256, 131.
[57] *Ibid.*
[58] *Ibid.*, 137-138.
[59] *Ibid.*, 565, 289.

founded on his understanding of obligations under natural law, which furnished states with the rights to liberty, equality, sovereignty and independence.[60]

Emmerich de Vattel also articulated the principle of non-intervention as a duty of equally sovereign states. Writing in the eighteenth-century, Vattel argued against interventionary acts, for they would violate states' right to independence and sovereignty that are bestowed upon them by nature. His formulation of international law was based on an international society comprised of independent states. He conceived international law as a legal framework governing relations between states, and by definition, therefore, states' domestic affairs were left out of international law's area of application. For matters of domestic concern, Vattel wrote no foreign power had a right to interfere unless it was called upon to do so. In this respect, he stated that to interfere "in the domestic affairs of another nation or to undertake to constrain its councils is to do an injury."[61] He also argued that liberty and independence of nations implied that each nation had the right to govern itself as it deemed proper and consequently no nation had the right to interfere in the government of another.[62] Thus, Vattel was an ardent supporter of the respect for the principle of non-intervention in internal affairs. Nonetheless, Vattel also established exceptions to the rule of non-intervention. For example, he recognized a state's assistance to an oppressed people upon request as lawful.[63] In cases where the opposition to tyranny amounted to a civil war, Vattel stated that "foreign Nations may

---

[60] *Ibid.*, 15-16.
[61] Emmerich de Vattel, *The Law of Nations or the Principles of Natural Law Applied to the Conduct and to the Affairs of Nations and of Sovereigns*, bk. 1, ch. 3, para. 37, quoted in Thomas and Thomas, Jr., *Non-intervention*, 5.
[62] Vattel, *The Law of Nations*, bk. 2, ch. 4, para. 54, quoted in Vincent, *Nonintervention*, 30.

assist that one of the parties which seems to have justice on its side."[64] In addition, he also anticipated permissibility of intervention in certain cases for balance of power purposes. Although less clear on this exception, Vattel affirmed that nations might use "all upright means" to prevent the nation, which upsets the balance of power from achieving a significant degree of power.[65] Hence, Vattel denounced intervention, but at the same time provided a certain leeway for instances of lawful intervention.

Subsequent political thinkers joined these pioneer legal scholars in arguing against intervention. Among them, Immanuel Kant (1724-1804) in his major essay, *Perpetual Peace*, vigorously condemned a right of intervention into another state's domestic affairs. One of Kant's preliminary articles on perpetual peace states: "No state shall interfere by force in the constitution or government of another state."[66] He considered this principle to be crucial for the attainment of peace among nations. However, Kant seems to qualify his prohibition of intervention and his insistence on internal sovereignty by stating in his first definitive article on perpetual peace that "the civil constitution in each state should be republican."[67] Thus, Kant is of the opinion that world peace could only be achieved when the republican form of government had become universal.[68] Consequently, some scholars argue that his emphasis on the

---

[63] Vattel, *The Law of Nations*, bk. 2, ch. 4, para. 54, quoted in Sean D. Murphy, *Humanitarian Intervention, The United Nations in an Evolving World Order* (Philadelphia: University of Pennsylvania Press, 1996), 46.

[64] Vattel, *The Law of Nations*, bk. 2, ch. 4, para. 56, quoted in Thomas and Thomas, Jr., *Non-intervention*, 6.

[65] Vattel, *The Law of Nations*, bk. 3, ch. 3, para. 49, quoted in Thomas and Thomas, Jr., *Non-intervention*, 6.

[66] Hans Reiss (ed.), H. B. Nisbet (trans.), *Kant, Political Writings* (Cambridge: Cambridge University Press, 1991), 96.

[67] *Ibid.*, 99.

[68] Kant's idea that a world of republican governments would secure endurable peace later gave way to the assumption that common liberal and democratic values play a considerable role in moderating power politics and significantly reduce resort to force. Elaborated by President Wilson in early twentieth century, the liberal proposition of democratic peace is revitalized at length particularly in the

republican form of government in the attainment of durable peace gives precedence to republicanism over the rule of non-intervention, which opens a space for intervention in support of movements fighting against non-republican forms of government.[69] In this respect, Vincent suggests Kant required "the establishment of republican government within states before a rule of non-intervention could operate between them."[70] Thomas and Thomas claim that rather than advocating the principle of non-intervention per se, Kant "stands for the theory that no state shall intermeddle by force with the constitution or government of a republican state." [71] As a result, it can be said that Kant envisaged adherence to the principle of non-intervention on the basis of a revision of the international order based on the republican lines.

Among other important political thinkers who opposed intervention was John Stuart Mill (1806-1873). Interventions, according to him, undermined the national freedoms by disturbing the balance of forces.[72] In addition, Mill also objected to intervention for assisting people in their fight against repression, for he believed people should resist and struggle on their own to obtain liberty.[73] In his conception, any effort to grant freedom to a political community other than the people's own is bound to fail, since people themselves should develop "the virtues needful for maintaining

---

aftermath of the Cold War. For the link between Kant and the democratic peace theory, see Michael Doyle, "Kant, Liberal Legacies, and Foreign Affairs, part 1," *Philosophy and Public Affairs* 12:3 (1983), 205-235; Michael Doyle, "Kant, Liberal Legacies, and Foreign Affairs, part 2," *Philosophy and Public Affairs* 12:4 (1983), 323-353; Michael Doyle, "Liberalism and World Politics," *American Political Science Review* 80:4 (1986), 1151-1161. Also for democratic peace theory in the post-Cold War, see Bruce Russett, *Grasping the Democratic Peace, Principles for a Post-Cold War World* (Princeton: Princeton University Press, 1993).

[69] See for example, Fernando R. Teson, *A Philosophy of International Law* (Boulder: Westview Press, 1998), 6.

[70] Vincent, *Nonintervention, 62.*

[71] Thomas and Thomas, Jr., *Non-intervention,* 8.

[72] John Stuart Mill, *A Few Words on Non-Intervention* (1859), reprinted in G. Himmelfarb (ed.), *Essays on Politics and Culture*, (1962), 368, quoted in Murphy, *Humanitarian Intervention,* 46.

[73] *Ibid.*

freedom."[74] The principle of non-intervention, Mill insisted, was the guarantee against intrusive foreign interventions, which would hinder the success of efforts towards self-determination. Yet, he recognized certain situations wherein interventions might be acceptable among 'civilized' nations,[75] such as assisting people fighting against foreign oppression or native tyranny sustained by foreign arms. Mill argued that intervention in this case would not "disturb the balance of forces on which the permanent maintenance of freedom in a country depends, but to redress that balance when it is already unfairly and violently disturbed."[76] To him, counter-intervention to restore the order interrupted by foreign intervention is "intervention to enforce non-intervention" which is "always rightful, always moral, if not always prudent."[77] One other exception to the rule of non-intervention in his writings might be said to be the permissibility of intervention in a protracted civil war. While there is no unequivocal reference to intervention for humanitarian purposes in his writings, he nevertheless noted that it became a maxim of international law that neighboring nations may intervene to a protracted civil war given that "the contending parties are so equally balanced that there is no probability of a speedy issue."[78] Although Mill considered this as an exceptional case, some scholars today regard his articulation of intervention in protracted civil wars as a

---

[74] Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic Books, Inc.,1977), 87.

[75] Mill made a distinction between rules pertinent to the relations of civilized nations and those applicable to the behavior towards 'barbarians.' In this respect, Mill did not rule out interventions of 'civilized' nations in 'barbarous' nations, since their being held in subjection, he believed, would likely to be for their own benefit. Mill, quoted in Murphy, *Humanitarian Intervention,* 46.

[76] John M. Robson (ed.), *The Collected Works of John Stuart Mill, Volume 21* (Toronto: University of Toronto Press), 123-124, quoted in Georgios Varouxakis, "John Stuart Mill on Intervention and Non-Intervention," *Journal of International Studies* 26:1 (1997), 60.

[77] *Ibid.* For a concise examination of philosophical foundations of Mill's views on non-intervention presented here, see Walzer, *Just and Unjust Wars,* 87-91.

[78] Mill, quoted in Murphy, *Humanitarian Intervention,* 47.

version that justifies the admissibility of interventions for humanitarian purposes in Mill's writing.[79]

In sum, the principle of non-intervention has its intellectual origins in both legal and political writings of the eighteenth century. All these scholarly works were based on an analogy between individuals and states. Just as in the domestic political system, individuals have a right to freedom and independence, so states have similar rights in the international arena.[80] Consequently, the rule of non-intervention that followed from the right to independence and sovereignty, was viewed as the major devise to ensure an environment in which states could achieve freedom. Nevertheless, the above analysis also shows that certain exceptional situations whereby a right to intervene might arise, are also recognized in the writings of philosophers by the arguments of international order, stability and republican legitimacy.

1. 3. AN OVERVIEW OF INTERVENTIONS PRIOR TO THE UNITED NATIONS

Notwithstanding the prominence attached to the non-intervention rule in legal and political treatises, a close examination of practices of states in the nineteenth and early twentieth centuries reveals that there are quite a number of examples of

[79] See for example, Walzer, *Just and Unjust Wars*, 56.
[80] Brierly, *The Law of Nations*, 29-30; Richard Little, "Recent Literature on Intervention and Non-Intervention," in Ian Forbes and Mark Hoffman (eds.), *Political Theory, International Relations, and the Ethics of Intervention* (London: The Macmillan Press Ltd., 1993) 22; Walzer, *Just and Unjust Wars*, 87.

interference in internal affairs in history and that intervention was a common instrument of foreign policy goals.

The Concert system established in the aftermath of Napoleon's defeat was an attempt to rationalize the uncertainties of the temporary alliances of the classical balance of power system of the eighteenth century through more assertive leadership by the great powers. Intervention during this period was an instrument at the hands of European conservative powers to check deviant movements from the general great power consensus. In addition, a right of intervention was often invoked by virtue of the treaties signed with non-European and non-Western powers.

During the same period, European powers also carried out several interventions in the Americas. Although President Monroe's message of 1823 sent a warning to European powers that the United States would not be indifferent to European interventions in the Western Hemisphere, it was not until late nineteenth century that the US assumed an assertive role with regards to European adventures in the American Hemisphere, forcing the European powers to observe the principle of non-intervention in the Americas. The interpretations of the Monroe Doctrine and the corollaries incorporated in it expanded with the growth of American power. As a result, over time, United States' warning to European powers not to intervene in the Americas became a license for its own interventionary policies towards its southern neighbors. Consequently, the United States undertook a number of interventions in Central and Latin America in order to prevent European interventions.

With the establishment of the League of Nations, a mechanism for restricting the recourse to force through a detailed set of procedures for the peaceful settlement of conflicts. The League of Nations was created with a view to avoid a recurrence of the brutal horrors of the Great War. The League represented the first concerted effort to institutionalize collective security under international law and it was predicated upon the idealist assumption that conflict could be avoided by proper application of diplomacy and international law. The trend in this period reflected the predominant concern of avoiding armed conflict. Thus, the League assigned a definitive emphasis on non-military measures in securing world peace. Accordingly, military intervention for any reason was neither foreseen nor proscribed under any circumstances.

1. 3. 1. Intervention During the Era of the Concert of Europe

The Concert system was set up in 1815 at the Vienna peace conferences following the Napoleonic Wars. Although initially devised against the newly defeated French Empire, the aim of the new political order was first and foremost to hinder the domination of Europe by one single power, and thereby to contain as well as prevent international crises. Above all, the Vienna settlement was built on the common interests of the major European powers, Britain, Austria, Russia, Prussia and later France, to resist any revolutionary movement as well as hegemonic aspirations by any one of them. One prominent scholar described the Concert of Europe as "an exclusive club for great powers whose members were self-appointed guardians of the European community and executive directors of its affairs."[81] It was essentially a consultation and cooperation mechanism based on ad hoc conferences between the great powers in

times of perceived challenge to their internal monarchic systems and to the existing equilibrium. In this sense, the Concert of Europe, as it became known, was a system of "voluntary collusion among an oligarchy of great powers."[82] In this respect, the Concert of Europe was built upon realist assumptions to manage the security of Europe. The classical period of the Concert system survived up until the Crimean War (1856). In fact, the 1848 revolutions had already shaken the basis of the Concert. The rise of nationalism and later the unification of Italy and Germany profoundly changed the distribution of power and the European equilibrium. Thus, the general consensus among the great powers gradually eroded and was replaced first by a period of international anarchy, and later by permanent alliances.[83]

As such, military intervention during the Concert of Europe was recognized as a legitimate instrument of the great powers in order to achieve political ends. Its effective function was based on monarchical solidarity and consensus for the suppression of revolutionary movements. To interfere in the internal affairs of any country departing from dynastic rule was considered a legitimate right of the great powers in maintaining the established social and political order, since the equilibrium in the European balance of power was not only seen in physical terms, but also in

---

[81] Inis L. Claude, Jr., *Swords Into Plow Shares, The Problems and Progress of International Organization* (New York: Random House, 1984), 25.

[82] Beatrice Heuser, "Sovereignty, Self-Determination and Security: New World Orders in the Twentieth Century" in Sohail H. Hashmi (ed.), *State Sovereignty: Change and Persistence in International Relations* (University Park: The Pennsylvania State University Press, 1997), 83; see also Thomas G. Otte, "Of Congresses and Gunboats: Military Intervention in the Nineteenth Century" in Andrew M. Dorman and Thomas G. Otte (eds.), *Military Intervention: From Gunboat Diplomacy to Humanitarian Intervention* (Hants, England: Dartmouth, 1995), 19.

[83] For history of this period, see William Norton Medlicott, *Bismarck, Gladstone, and the Concert of Europe* (New York: Greenwood Press, 1969); Rene Albrecht-Carrie, *A Diplomatic History of Europe Since the Congress of Vienna* (New York: Harper & Row, 1973); Carsten Holbraad, *The Concert of Europe: A Study in German and British International Theory 1815-1914* (Harlow: Longmans, 1970).

terms of shared moral values.[84] Consequently, despite the generally accepted rule of non-intervention, the Holy Alliance asserted "a right of self-preservation by legitimate governments" against revolutions aiming to overthrow them.[85] The idea that the internal type of government of one state other than monarchy was detrimental to the security of other nations and thus justified intervention in the internal affairs of that state in the interests of European solidarity and the maintenance of the status quo, was the basis of the Protocol signed between Austria, Russia and Prussia at the Conference of Troppau in 1820. It stated that:

> States which have undergone a change of government due to revolution, the results of which threaten other states, *ipso facto* cease to be members of the European Alliance, remain excluded from it until their situation gives guarantees for legal order and stability. If, owing to such alterations, immediate danger threaten other states, the parties bind themselves, by peaceful means, or if need be by arms, to bring back the guilty state into the bosom of the Great Alliance.[86]

At this conference, Austria was mandated by the Holy Alliance to carry out a unilateral intervention in Naples and Piedmont to halt liberal revolutions there. This resulted directly in the restoration of autocratic monarchies.[87] Another example of this type of intervention was the French intervention in Spain in 1823. Similarly, Bourbon France was authorized by the Holy Alliance (Austria, Prussia and Russia) to intervene militarily in Spain in order to suppress the Spanish revolution and reinstate King Ferdinand VII's power.[88] However, it should be noted that Britain raised objections to the policy of intervention in the internal affairs of another nation to maintain dynastic regimes, and protested the Troppau Protocol, asserting that intervention was

---

[84] Henry Kissinger, *Diplomacy* (New York: Simon & Schuster, 1994), 79.
[85] Thomas and Thomas, Jr., *Non-intervention,* 9.
[86] Otte, "Of Congresses and Gunboats: Military Intervention in the Nineteenth Century," 25-26.
[87] David Thomson, *Europe Since Napoleon* (New York: Penguin Books, 1986), 136.
[88] Albrecht-Carrie, *A Diplomatic History of Europe,* 28.

damaging to the idea of internal sovereignty. In 1820, regarding the Spanish revolution, the British Foreign Minister, Castlereagh, argued that it was entirely an internal matter and that establishing a system of automatic and collective intervention by other states in the internal affairs of any state going through revolutionary change was 'impracticable' and 'objectionable.'[89] Nonetheless, in 1826 and 1827, Britain intervened in Portugal upon the revolt of the Portuguese army in order to preserve the type of constitutional government.[90]

Within the context of great power relations, the leading participants of the Concert effectively refrained from intervening into each other's affairs,[91] for the underlying aim of the Concert of Europe mechanism was to prevent war among great powers themselves. As a result, one can argue that within the Concert system, the source of legitimacy of military intervention lied in the Great Power consensus over the predominant aim of sustaining the established order and stability in Europe. Military intervention was undertaken for securing compatibility between domestic orders, and thus a right of intervention in the internal affairs of others was invoked when it had the defensive purpose of promoting dynastic legitimacy.[92]

---

[89] Norman Rich, *Great Power Diplomacy: 1814-1914* (New York: McGraw-Hill, Inc., 1992), 36. For a succinct elaboration of Britain's position and for the exposition of British Foreign Minister Castlereagh's interpretation of the non-intervention principle, see Vincent, *Nonintervention*, 73-84.
[90] Thomson, *Europe Since Napoleon*, 136-137.
[91] Charles Lipson, "Is the Future of Collective Security Like the Past?" in George W. Downs (ed.), *Collective Security Beyond the Cold War* (Ann Arbor: The University of Michigan Press, 1994), 108.

1. 3. 2. European Interventions Outside Europe

Outside Europe, the legitimacy of intervention was governed by references to rights by virtue of treaties and/or the notion of assisting the oppressed. European powers carried out several interventions for example, to Ottoman Empire, by arguing a right of intervention to protect the mistreated Christians. Although their rationalizations based on humanitarian goals should be approached with some skepticism, there is some merit to the opinion that the conservative views of the Holy Alliance was gradually replaced by a more liberal thinking within the Concert. As a result of the development of progressive ideas as exemplified in the writings of liberal philosophers like John Stuart Mill, intervention for the purpose of liberating the oppressed and ending their suffering was increasingly advocated.[93]

During 1827-1830, Britain, France and Russia militarily intervened in Greece to support the Greek upheaval to Ottoman rule, which ultimately forced the Ottoman Empire to accept Greek independence in 1830 and the terms of the Treaty of London, signed between the three powers in 1827.[94] The argument that this intervention had humanitarian considerations arouse from the terms of the London Treaty. In the preamble of the Treaty, it was agreed that action was required "no less by sentiments of humanity, than by interests for the tranquility of Europe."[95] However, scholars

---

[92] Otte, "Of Congresses and Gunboats: Military Intervention in the Nineteenth Century," 36-38; also, Hoffmann, "The Problem of Intervention," 12.

[93] For a discussion of humanitarian claims of the Concert interventions, see Holbraad, *The Concert of Europe*, 162-76.

[94] For a detailed historical analysis of the period leading to intervention in Greece, see the seminal work of Harold Temperley, *England and the Near East, The Crimea* (London: Frank Cass & Co., Ltd., 1964), especially ch. 2.

[95] British and Foreign State Papers, Vol. 14 (1826-1827), 633, quoted in Murphy, *Humanitarian Intervention*, 52.

differ on the question of whether this intervention had a humanitarian character. For example, Oppenheim points out that the main concern was the brutality that the Christian population was facing.[96] Franck and Rodley note that one of the main motivations of the intervening states was the protection of their commercial interests.[97] Alternatively, Finnemore argues that geostrategic factors, rather than humanitarian considerations, were decisive in this intervention. She emphasizes, for example, that Britain and France had a power political motive in that they intended to balance Russia by taking part in the intervention.[98] In this respect, she underlines that the nineteenth century multilateralism was strategic, rather than political and normative. More precisely, it was not inspired by "shared notions about when the use of force is legitimate and appropriate."[99]

Another important case in which humanitarian concerns were advanced was the French intervention in Syria to prevent the suppression of Maronite Christians during 1860-1861. The intervention was launched upon authorization from Austria, Britain, Prussia, Russia and Ottoman Empire convening at the Conference of Paris. Following the adoption of a new constitution for the region that required a Christian governor directly responsible to the Sublime Porte, French troops were withdrawn in 1861.[100] Given Ottoman consent, albeit a reluctant one, some writers argue that this intervention should be considered as a case demonstrating the evolution of the

---

[96] Hersch Lauterpacht (ed.), *L. Oppenheim, International Law*, 313.
[97] Thomas Franck and Nigel Rodley, "After Bangladesh: The Law of Humanitarian Intervention by Military Force," *American Journal of International Law* 67:2 (1973), 280.
[98] Martha Finnemore, "Constructing Norms of Humanitarian Intervention" in Peter Katzenstein (ed.), *The Culture of National Security: Norms and Identity in World Politics* (New York: Columbia University Press, 1996), 163-164.
[99] *Ibid.*, 182.
[100] M. S. Anderson, *The Eastern Question 1774-1923* (London: Macmillan, 1966), 156-158.

doctrine of non-consensual humanitarian intervention.[101] Yet, others describe this intervention positively as an example of humanitarian intervention.[102]

Similarly, Russia declared war on Turkey in 1877, alleging the mistreatment of Christians in Bosnia, Herzegovina and Bulgaria. The war ended with the conclusion of the Treaty of San-Stefano, which finally led to the adoption of Berlin Treaty of 1878 that established a system of Christian autonomy in Bulgaria and Montenegro. Also, by this treaty, Serbia and Rumania gained independence, and Austria annexed Bosnia and Herzegovina.[103] Although humanitarian concerns were put forward as the rationale of the intervention, writers agree that this case is one that displays the difficulty in assessing the motivations behind intervention and demonstrates the interplay of humanitarianism and political interests of the intervening state. In that respect, Britain for example, considered this intervention as a reflection of Russian aspirations to control the Straits and Constantinople.[104] In addition, there was no Concert authorization given for Russian intervention. Although in the London Protocol of 1877, Austria-Hungary, France, Germany, Britain, Italy and Russia reserved the right to take all necessary measures in the event of inadequate reforms in the region by the Sultan, they remained neutral in the Russo-Turkish War.

One other example of intervention in the Ottoman Empire occurred following the rebellion in Macedonia in 1903. Austria-Hungary and Russia acting under the auspices of the European powers demanded that the Ottoman Empire embark on

---

[101] Murphy, *Humanitarian Intervention*, 54.
[102] See for example, Ian Brownlie, *International Law and the Use of Force by States* (Oxford: Clarendon Press, 1963), 340.
[103] For the history of the period, see Anderson, *The Eastern Question*, 178-219.
[104] Franck and Rodley, "After Bangladesh," 283.

certain reforms in Macedonia in order to prevent atrocities against the Christian Macedonian population. Although Ottoman Empire accepted the demands, the subsequent revolution in Macedonia resulted in further atrocities, which led to a declaration of war by Greece, Serbia and Bulgaria on the Ottoman Empire in 1912. The war ended with the signing of the Treaty of London in 1913, through which Macedonia was ceded to the Balkan states for partition.[105] The fact that the intervention ended with actual loss of territory to the intervening states is considered to be indicative of the existence of motives other than humanitarian ones,[106] although it was carried out on the grounds of assisting Christians in Macedonia.[107] In sum, regardless of the underlying motivations, the significance of these interventions in the Ottoman Empire lies in their justification on the grounds of humanitarian considerations prompted by atrocities perpetuated upon the Christian populations.

From the above discussion, it follows that during the Concert of Europe, intervention outside the Concert system was mainly guided by a right of interference to assist the oppressed as articulated in the writings of prominent scholars. While one can argue that the motives of intervention were varied and could not be classified in one single category, the justifications raised during these interventions place them, in the sphere of intervention for humanitarian purposes. In that respect, Franck and Rodley note that humanitarian motives behind the Concert of Europe's "recurrent interventions in Ottoman affairs [should] probably not...be dismissed as bogus."[108] Nevertheless, there are writers arguing that the humanitarian claims provided a convenient pretext

---

[105] For the history of the period, see Anderson, *The Eastern Question*, 261-309.
[106] Murphy, *Humanitarian Intervention*, 57.
[107] Francis Kofi Abiew, *The Evolution of the Doctrine and Practice of Humanitarian Intervention* (The Hague: Kluwer Law International, 1999), 53.
[108] Franck and Rodley, "After Bangladesh," 281.

for politically motivated interventions. For example, examining the instances of intervention during this period, Brownlie concludes that "no genuine case of humanitarian intervention has occurred, with the possible exception of the occupation of Syria in 1860 and 1861."[109]

1. 3. 3. Intervention in the Americas

Across the Atlantic, the adoption of the doctrine of non-intervention can be traced to the United States' early policy of neutrality, which kept it out of the struggles between Spain and its Latin American colonies from 1811 to the recognition of some of the new states born in the Americas in 1822, and its ultimate formulation as a principle in the Monroe Doctrine, which was proclaimed by President Monroe in 1823.[110]

The Monroe Doctrine, though varying in interpretations, shaped American foreign policy throughout the nineteenth century. The doctrine, formulated by President Monroe, included three principles. First, it articulated a principle of non-colonization. Alarmed by Russian territorial advances in the northwest part of the American Continent,[111] the Doctrine stated that the United States would not condone further colonization in the Western Hemisphere by any European power:

> "The American continents, by the free and independent condition which they have assumed and maintained, are

[109] Brownlie, *International Law*, 340.
[110] For the origins of the principles formulated in the Monroe Doctrine, see Julius W. Pratt, Vincent P. De Santis and Joseph M. Siracusa, *A History of United States Foreign Policy,* (USA: Prentice-Hall, Inc., 1980), 62-67.
[111] Jerald A. Combs, *The History of American Foreign Policy, Vol. I: To 1917* (New York: Newbery Award Records, Inc., 1986), 71; Meray, *Devletler Hukukuna Giriş,* 398.

> henceforth not to be considered as subjects for future colonization by any European power."[112]

Secondly, the Doctrine included a restatement of American neutrality concerning European affairs, and established the principle of non-intervention:

> "In the wars of the European powers in matters relating to themselves we have never taken any part, nor does it comport with our policy so to do. It is only when our rights are invaded or seriously menaced that we resent injuries or make preparation for our defence... Our policy in regard to Europe, which was adopted at an early stage of the wars which have so long agitated that quarter of the globe, nevertheless remains the same, which is, not to interfere in the internal concerns of any of its powers..."[113]

Finally, the promise of abstention from interference was followed by a warning that European powers must keep away from the independent nations of the Western Hemisphere and must not intervene in American affairs.

> "With the existing colonies or dependencies of any European power we have not interfered and shall not interfere. But with the Governments who have declared their independence and maintained it, and whose independence we have, on great consideration and on just principles, acknowledged, we could not view any interposition for the purpose of oppressing them, or controlling in any other manner their destiny, by any European power, in any other light than as the manifestation of an unfriendly disposition toward the United States..."[114]

Provoked by a concern about European intervention in Latin America to restore to Spain its revolted colonies,[115] the doctrine further declared that any attempt to extend the European system to any part of the Western Hemisphere would be dangerous to the United States' peace and security, and therefore that such interpositions would not

---

[112] The Monroe Doctrine, 2 December 1823, reprinted in Dennis Merrill and Thomas G. Paterson (eds.), *Major Problems in American Foreign Relations, Vol. I: To 1920* (New York: Houghton Mifflin Company, 2000), 170.
[113] *Ibid.*, 171.
[114] *Ibid.*
[115] Dexter Perkins, "Defense of Commerce and Ideals" in Merrill and Paterson (eds.), *Major Problems in American Foreign Relations,* 398.

be viewed with indifference.[116] In this sense, the Doctrine represents the expression of the definition of an American sphere of security interests. As a result, it can be said that the Monroe Doctrine idealistically aimed to protect republican liberty in the Americas against European absolutism,[117] while realistically attempting to impede "the ability of another great power to threaten the United States from a close proximity."[118]

On the other hand, although the Monroe Doctrine set forth a doctrine of non-intervention in European affairs and an authoritative expectation of a reciprocal attitude by the European powers towards the Americas, it remained silent on the principles, which would guide the United States in its relations with Latin America. While denying European powers the right to acquire additional colonies on the American continent, it neither ruled out further expansion of the United States in the continent nor precluded the United States from interfering in the internal affairs of the Latin American states. Nevertheless, in the first half of the nineteenth century, the principle of non-intervention directed the policy of the United States toward new states in Latin America.[119]

Despite the assertiveness of this warning, European intervention in the Americas continued in the years following the declaration of the Monroe Doctrine. For example, Britain occupied the Falkland Islands in 1833, and it extended its territories in Central America, occupying San Juan, Nicaragua between 1830 and 1841. France

---

[116] The Monroe Doctrine, reprinted in Merrill and Paterson (eds.), *Major Problems in American Foreign Relations,* 171.
[117] Dexter Perkins, *The American Approach to Foreign Policy* (Cambridge: Harvard University Press, 1962), 79.
[118] Combs, *The History of American Foreign Policy,* 73.

also got involved, intervening in Mexico in 1838 to collect claims for injuries suffered by French nationals, occupying the Mexican port of Vera Cruz for a short period of time. Another instance of European intervention was the joint blockade of Rio de la Plata by Britain and France in 1845. In each of these cases, the United States failed to respond to these European interventions in Latin America and did not consider such actions as "manifestation of an unfriendly disposition toward the United States" as deemed by President Monroe. For example, in reply to an Argentinean request of aid against the joint British and French blockade, the United States expressed that the Monroe Doctrine pledged no obligation with regards to the Latin American states.[120]

Nevertheless, with the rise of its power and strength towards the end of the century, the United States began to take action to determinately prevent European interventions in the Americas. The most significant enforcement of the Monroe Doctrine was against the French intervention in Mexico in the 1860s. In 1861, upon suspension of payments of foreign loans by the Juarez government, Spain, Britain and France agreed to undertake a joint action against Mexico. The three powers then proceeded to occupy the Mexican port of Vera Cruz in December 1861 and January 1862. After the withdrawal of the British and Spanish forces in early 1862, Napoleon III was left with a free hand to take advantage of the political chaos in Mexico and eventually create a puppet regime there.[121] Early in the crisis, the United States repeatedly expressed its disapproval of the events in Mexico and protested against the

---

[119] Vincent, *Nonintervention*, 118.
[120] Thomas and Thomas, Jr., *Non-intervention*, 15-16.
[121] For the history of relations between the Great Powers and Mexico, see Rich, *Great Power Diplomacy*, 167-183. Also, Pratt, Santis and Siracusa, *A History of United States Foreign Policy*, 153-156.

installation of a monarchy against the will of the Mexican people and the United States.[122] However, civil war in the United States, precluded any action beyond diplomatic warnings against France. After the Civil War ended, American warnings to the French were turned into outright threats, which eventually led to the withdrawal of French forces and the fall of the Mexican monarchy in 1867.[123]

Another instance of the effective enforcement of the Monroe Doctrine occurred when President Cleveland intervened in the boundary dispute between Britain and Venezuela regarding British Guiana. Upon a Venezuelan appeal to the United States for aid, Secretary of State Olney invoked the Monroe Doctrine in 1895 with the aim of forcing Britain into arbitration of the question. Further, Secretary of State Olney's remarks on the boundary dispute between Venezuela and Britain asserted that the United States is "practically sovereign" on the American continent.[124] After continued pressure from the United States, British government finally agreed to arbitrate with Venezuela in November 1896. The Venezuelan crisis is significant because it marked Britain's recognition of American supremacy in the Western Hemisphere and increased prestige of the Monroe Doctrine in Europe.[125] Moreover, it also signified that the United States no longer intended to carry out the non-interventionary spirit of the Monroe Doctrine with regards to its relations with its southern neighbors. The change in American policy in this respect is illustrated in the US's subsequent

---

[122] See for example the Secretary of State, William H. Seward's letter of 3 March 1962, to the American ambassador in Britain, Charles Francis Adams, reprinted in Merrill and Paterson (eds.), *Major Problems in American Foreign Relations,* 310-311.

[123] Perkins, *The American Approach to Foreign Policy*, 9.

[124] Secretary of State Richard Olney's message to London, 20 July 1895, reprinted in Merrill and Paterson (eds.), *Major Problems in American Foreign Relations,* 318-320.

[125] For details of the Venezuelan crisis, see Rich, *Great Power Diplomacy,* 350-353; Thomas G. Paterson, J. Garry Clifford and Kenneth J. Hagan, *American Foreign Relations, Vol. II, A History Since 1895* (New York: Houghton Mifflin Company, 2000), 2-6; Pratt, Santis and Siracusa, *A History of United States Foreign Policy*, 158-162.

interventions in Cuba, Panama, the Dominican Republic, Nicaragua, Haiti and Mexico.

1. 3. 4. US Interventions and the New American Hegemony

In 1898, the United States intervened in the civil war between Cuba and Spain on the part of Cuban independence movement, which ultimately led to a war with Spain that resulted in American victory.[126] In his war message, President McKinley advanced elaborate justifications for intervention in Cuba. He explained the grounds for intervention as follows:

> "*First.* In the cause of humanity and to put an end to the barbarities, bloodshed, starvation, and horrible miseries now existing there, and which the parties to the conflict are either unable or unwilling to stop or mitigate. It is no answer to say this is all in another country, belonging to another nation, and is therefore none of our business. It is specially our duty, for it is right at our door.
> *Second.* We owe it to our citizens in Cuba to afford them that protection and indemnity for life and property which no government there can or will afford, and to that end to terminate the conditions that deprive them of legal protection.
> *Third.* The right to intervene may be justified by the very serious injury to the commerce, trade, and business of our people and by the wanton destruction of property and devastation of the island.
> *Fourth*, and which is of the utmost importance. The present condition of affairs in Cuba is a constant menace to our peace and entails upon this Government an enormous expense. With such a conflict waged for years in an island so near us and with which our people have such trade and business relations; when the lives and liberty of our citizens are in constant danger and their property destroyed and themselves ruined; where our trading vessels are liable to seizure and are seized at our very door by war ships of a foreign nation; the expeditions of filibustering that we are powerless to prevent

[126] For details of the Spanish-American War, see Combs, *The History of American Foreign Policy,* 141-151; Paterson, Clifford and Hagan, *American Foreign Relations,* 8-18; Pratt, Santis and Siracusa, *A History of United States Foreign Policy,* 172-178.

> altogether, and the irritating questions and entanglements thus arising –all these and others that I need not mention, with the resulting strained relations, are a constant menace to our peace and compel us to keep on a semi war footing with a nation with which we are at peace."[127]

As such, although humanitarian concerns were emphasized overwhelmingly, the fact that the US intervention in Cuba considerably reduced the Spanish influence in the Western Hemisphere and paved the way towards US dominance in the region suggests that intervention was motivated just as much by national interests.[128]

In 1903, the United States also intervened in the affairs of Colombia by assisting in Panama's independence from Colombia. The United States prevented the repression of Panamanian revolutionaries by obstructing the landing of Colombian forces in the area aimed at suppressing the rebellion. It landed its forces to protect the United States citizens and immediately recognized Panama as a state. President Roosevelt justified this action in terms of the national interests and safety of the United States as well as the interests of the civilized world.[129] The Panama Canal Treaty of November 18, 1903, also granted the United States canal rights and a zone of occupation.[130] Furthermore, the United States acquired a right to intervene in Panama to maintain order, which was embodied in the text of the new republic adopted on February 13, 1904.[131]

The Panama Canal intervention was followed by a new incident of intervention in the Dominican Republic upon the failure of Dominican Republic to pay its debts to the

---

[127] President McKinley's war message, 11 April 1898, reprinted in Merrill and Paterson (eds.), *Major Problems in American Foreign Relations,* 355.
[128] For detailed analysis of the intervention, see Thomas and Thomas, Jr., *Non-intervention,* 21-28.
[129] *Ibid.*, 29.
[130] Walter LaFeber, *The Panama Canal* (New York: Oxford University Press, 1989), 225-226.

United States and certain European nations. The intervention resulted in an agreement with the Dominican Republic in 1905, by which the United States set up a customs receivership and the Dominican Republic became a financial protectorate administered by the United States.[132] President Roosevelt in his annual message to Congress on December 6, 1904, declared that the United States would assume a right to intervene in cases of "chronic wrongdoing, or impotence" among Western Hemisphere nations, and "however reluctantly" would have to exercise "an international police power."[133] As explained by Roosevelt, this intervention was carried out for two reasons: to protect US claims and to preclude European nations from the forcible collection of debts, which might result in occupations in the Americas.[134] This principle of preventive diplomacy became known as the Roosevelt Corollary to the Monroe Doctrine.

A similar intervention also occurred in Haiti in 1915 after a long period of civil strife and disorder. To protect the citizens of the United States as well as other foreigners, especially French and British, and thus prevent possible interventions by those powers that would have extended their domination over this strategic island, President Wilson ordered the navy to invade Haiti in July 1915. This intervention resulted in the establishment of an American military regime that ruled the country until 1934.[135] The United States likewise intervened in Nicaragua upon the execution of two American citizens for assisting rebels in Nicaragua in 1909, to protect

---

[131] Rich, *Great Power Diplomacy,* 362.
[132] Pratt, Santis and Siracusa, *A History of United States Foreign Policy,* 198.
[133] President Theodore Roosevelt's annual message to Congress, 6 December 1904, reprinted in Merrill and Paterson (eds.), *Major Problems in American Foreign Relations,* 466.
[134] *Ibid.,* 466-467.

American lives and property. The Bryan-Chamorro Treaty signed in 1914 granted to the United States rights to construct and operate a canal in Nicaragua in exchange for $3 million.[136] A final example of American intervention was America's armed intervention in Mexico in 1914 to force the Huerta regime out of office, and later in 1916, as a result of continuing disorder and raids carried out on American territories by the revolutionary forces in Mexico. The events in Europe brought an end to intervention, and led to the withdrawal of American forces from Mexico in 1917.[137]

Thus, from the end of the nineteenth century onwards, the United States carried out extensive military, financial and strategic interventions in Latin America, known also as "big stick" or 'dollar' diplomacy.[138] Nevertheless, it can be argued that these interventions were primarily undertaken with the aim of protecting the security interests of the United States. In spite of the humanitarian concerns that were occasionally provoked, the preoccupation with self-preservation was manifested in the Monroe Doctrine's anxiety of the future European colonization and intervention in the Americas. This was perceived as a menace to US security, as outlined in the Roosevelt corollary of preventive intervention. Hence, although subsequent US interventions in the region eventually led to American hegemony in the Western Hemisphere, the primary consideration of interventionary policies of the United States was argued to be the protection of the continental United States.[139]

---

[135] Paterson, Clifford and Hagan, *American Foreign Relations,* 46; Walter LaFeber, *The American Age, US Foreign Policy At Home and Abroad, 1750 to the Present* (New York: W. W. Norton & Company, 1994), 282-284.
[136] LaFeber, *The American Age,* 282.
[137] For thorough analysis of the US interventions in Mexico, see Combs, *The History of American Foreign Policy,* 190-194; Pratt, Santis and Siracusa, *A History of United States Foreign Policy,* 202-206; LaFeber, *The American Age,* 277-281.
[138] Meray, *Devletler Hukukuna Giriş,* 402; Paterson, Clifford and Hagan, *American Foreign Relations,* 40, 43, 45; LaFeber, *The American Age,* 260.
[139] Thomas and Thomas, Jr., *Non-intervention,* 52.

1. 3. 5. The Inter-War Period

In contrast to the realist approach of the Concert of Europe, the League of Nations was founded upon idealist presumptions without the realistic instruments to safeguard its workability. The League of Nations reflected the desire to prevent the recurrence of war. It was based on the belief that war was not an inevitable condition of the inter-state relations. The essential means of achieving an endurable peace was imagined possible through the realization of democratic ideals through self-determination. Thus, the League did not attempt to radically alter the multi-state system. Rather, it was an effort to provide the effective institutional machinery for the peaceful settlement of disputes, as well as an effort to improve the operation of the existing international system. In this sense, the League represented a reform movement rather than a revolutionary one, based on the principle of sovereignty and self-government.[140]

As stated in the preamble of the Covenant, the League of Nations relied on "the acceptance of obligations not to resort to war" and "the maintenance of justice...in the dealings of organized peoples with one another" to preserve peace. Thus, it did not actually prohibit the use of force. Rather, it rationalized it by requiring its members to resolve their disputes peacefully through the judicial settlement or the League organs before they actually resorted to force (Covenant, arts. 12, 13, 15).[141] By this logic, unless the steps foreseen for peaceful dispute resolution were

---

[140] Claude, Jr., *Swords Into Plow Shares,* 55.

[141] Meray, *Devletler Hukukuna Giriş,* 405; Aslan Gündüz, *Milletlerarası Hukuk (International Law)* (İstanbul: Beta Basım A.Ş., 2000), 69; Edip F. Çelik, *Millelerarası Hukuk, İkinci Cilt (International Law, Vol. II)* (İstanbul: Filiz Kitabevi, 1982), 401.

exhausted, recourse to war would constitute a war against all members and theoretically result in collective response.

With regards to intervention, the League was precluded from interfering in matters under the domestic jurisdiction of the member states.[142] Although the League emphasized and elaborated a system for safeguarding the religious and linguistic rights of minorities in a series of treaties, the failure to comply with it by no means provided a basis for intervention. Since the obligations to preserve the international peace and security were so loosely defined, eventually the League proved to be powerless to guarantee their enforcement.[143]

The Kellogg-Briand Pact subsequently signed in 1928, provided for more explicit commitments. Its significance lied in the codification of the prohibition of war as an instrument of national foreign policy within international law.[144] Notwithstanding, the pact did not impose constraints on the uses of force short of war, leaving permissible uses of force unclear.[145] Although the pact would not be strong enough to impede yet another World War, it reversed the legal positivist idea of states' unrestricted right to war. The changed rhetoric about resort to war later found expression in postwar efforts aimed at rebuilding international peace and security.[146]

---

[142] The League Covenant, Article 15, para. 8.
[143] Heuser, "Sovereignty, Self-Determination and Security: New World Orders in the Twentieth Century," 84-87.
[144] Çelik, *Milleleraras Hukuk*, 407.
[145] Gündüz, *Milletleraras Hukuk*, 78.
[146] Anthony Clark Arend and Robert J. Beck, *International Law and the Use of Force, Beyond the UN Charter Paradigm* (London: Routledge, 1993), 23-24.

Hence, the approach to the use of force in general during the pre-Second World War period mirrored the sentiment of preventing war at whatever cost. Consequently, the sovereignty of states and the rule of non-intervention prevailed over other values such as the freedoms and rights of individuals. One should note, however, that the inter-war aggressors, i.e. Japan, Italy and Germany, actually appealed to humanitarian reasons for their interventions.[147] Although their interventions reveal the potential abuse of the humanitarian justifications, they are nevertheless significant in terms of reflecting the importance of this notion during the inter-war period.

In sum, it can be concluded that the phenomenon of intervention in internal affairs has coexisted with the principle of non-intervention since the foundation of the state system. The discussion of the era of Concert of Europe suggests that the exercise of sovereign rights was conditional on the observance of certain standards of internal affairs. The practice of armed intervention for humanitarian reasons during this period also implies that the right to intervene in situations of severe deprivation of the most basic human rights as articulated in the doctrines of non-intervention was acknowledged. In the Americas, the doctrine of non-intervention as envisaged in the Monroe Doctrine, functioned as an instrument through which the United States persuaded and coerced the states on the other side of the Atlantic regarding their polices toward the nations of Western Hemisphere. Eventually, the League of Nations established the rule of non-intervention as an imperative of international law. Thus, despite the frequency of the incidents of intervention, the doctrine of non-intervention

[147] For example, in rationalizing the German occupation of Bohemia and Moravia in 1939, Hitler argued that there were "assaults on the life and liberties of minorities" and stated that the purpose of intervention was to disarm "Czech groups and terrorist bands threatening the lives of minorities." Brownlie, *International Law*, 340.

served as a legal restraint and provided the states a reference position for standards governing acceptable and unacceptable behavior in international relations as well as for situations where resort to intervention was considered tolerable.

CHAPTER II:

THE PRINCIPLE OF NON-INTERVENTION AT THE UNITED NATIONS

As a rule, non-intervention is advanced to guide the interstate relations with the aim of maintaining the international system based on the sovereign equality of states. Presently and at the universal level, it is principally the United Nations documents (the Charter and declaratory resolutions of the Assembly) that affirm and govern this preferred pattern of conduct in international relations. Although the emphasis in the United Nations Charter and in various related UN documents can be taken to indicate that there exists a consensus about the significance of the principle, there are controversies with respect to its interpretation and disagreements regarding the scope of behavior that is proscribed by implication.

This chapter will provide an overview of the legal framework governing the UN Charter for more substantive discussion of the contribution of the United Nations to the development of norms concerning military intervention in the domestic affairs. Thus, this chapter will examine the United Nations' doctrine of non-intervention by introducing the key provisions of the Charter and the contentions regarding their interpretation. For this purpose, it will first scrutinize the relevant provisions of the

United Nations Charter in order to discern the place of the principle of non-intervention in the Charter. It will also attempt to clarify the main notions that these provisions contain with an emphasis on their different interpretations. In this context, it will then look at the exceptions to the rule of non-intervention that the UN Charter provides for and the sources for authorizing such interventions. From this analysis, it will move on to explore the extent to which the principle of non-intervention has been embraced and emphasized in various General Assembly declarations over the years. In this regard, an attempt will be made to distinguish any patterns in the views expressed by the General Assembly, as it represents a forum of the society of states. The primary focus will be on the legal status and political prominence of the Assembly's support of the principle.

2.1. RELEVANT PROVISIONS OF THE UN CHARTER

The United Nations Charter does not explicitly spell out the principle of non-intervention as a rule governing relations between member states.[1] It is rather implied in the statement of Principles of the United Nations (Article 2). For example, Article 2(1) roots the Organization on the "principle of the sovereign equality of all its Members," and Article 2(3) calls for the peaceful settlement of international disputes. For the purposes of the study, however, the two most relevant provisions are Article 2(4) and Article 2(7). While the former lays down the general prohibition of the use of force -and in this respect can be said to govern the proscription of intervention by

states-, the latter establishes the United Nations' jurisdiction in relation to the area of the discretion of sovereign states, and thus draws the boundaries for United Nations intervention itself.

2. 1. 1. Article 2(4)

Article 2(4) requires that states refrain in their international relations, from the threat or use of force. In this sense, it represents the most explicit Charter provision against intervention with the use of force. In this respect, Kelsen maintains that by establishing the obligation of states to refrain from the threat or use of force in their relations, Article 2(4) implies the obligation of states to refrain from intervention in the domestic matters of other states.[2] Consequently, its interpretation constitutes the basis for discussion of unilateral military interventions. Article 2(4) reads as follows:

> "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any manner inconsistent with the Purposes of the United Nations."

As such, Article 2(4) stipulates a general prohibition of the use of force. More precisely, it applies to any kind of force "regardless of whether or not it constitutes a technical state of war."[3]

The prohibition of the use of force was a rule of pre-Charter customary international law. However, permissible forms of self-help had relatively a wider base in the pre-

---

[1] The International Court of Justice explanation for this was that "it was never intended that the Charter should embody written confirmation of every essential principle of international law in force." *ICJ Reports* (1986), *Nicaragua Case* (Merits), para. 202.
[2] Hans Kelsen, *The Law of the United Nations* (London: Stevens & Sons Limited, 1951), 770.
[3] Michael Akehurst, *A Modern Introduction to International Law,* (London: George Allen and Unwin, 1984), 219.

Charter period.[4] Under contemporary customary international law, the UN Charter extends the prohibition of force beyond war to include other types of unilateral use and threat of force. It therefore endows the prohibition of force as a general and authoritative principle.[5] In this respect, the substantial majority of legal scholars attribute the norm contained in Article 2(4) to a *jus cogens* character.[6] To begin with, by providing for a collective security system, the Charter limits the permissible basis for acts of self-help. Secondly, the Charter also stipulates in Article 2(6) that the Organization will ensure the observation of its principles by non-Members "so far as may be necessary for the maintenance of international peace and security,"[7] implying that the UN may take measures against non-Members as well in response to their

---

[4] Self-help may generally be defined as forcible measures to redress violations of the law. For detailed exploration of the concept, see Hans Kelsen, *Principles of International Law* (New York: Rinehart & Company, 1952), 8-9. One such permissible form of self-help, for example, is the doctrine of self-preservation. According to the doctrine of self-preservation, a state may violate any norm of international law or infringe any right of another state, if the elimination of violation of its vital interests and its preservation requires such action. In other words, under the doctrine of self-preservation, any action taken by a state to remove the potential impairment to its interests, regardless of the immediacy of the threat, is considered legal. Scholars who are of the opinion that there is a right to self-preservation, assert that this right has priority among all the fundamental rights of states. For example, the English jurist Hall states that "in the last resort almost the whole of the duties of states are subordinated to the right of self-preservation." Indeed, several interventions were justified on the grounds of self-preservation. The interventions by European powers to maintain balance of power are often included under the wider doctrine of self-preservation. The Monroe Doctrine and the United States interventions in Latin America to prevent European interventions provide alternate examples of the exercise of the right to self-preservation. See A. Pearce Higgins (ed.), W. E. Hall, *A Treatise on International Law* (Oxford: Clarendon Press, 1924), 322, quoted in R. J. Vincent, *Nonintervention and International Order* (Princeton: Princeton University Press, 1974), 288. For the doctrine of self-preservation in general, see Hans Kelsen, *Principles of International Law* (New York: Rinehart & Company, 1952), 58-59; Hersch Lauterpacht (ed.), L. Oppenheim, *International Law: A Treatise, Vol. I – Peace*, (London: Longmans, Green & Co., 1955), 297-304.

[5] Louis Henkin, "Use of Force: Law and US Policy," in Right v. Might, *International Law and the Use of Force* (New York: Council on Foreign Relations Press, 1991), 38.

[6] See for example, Malcolm N. Shaw, *International* Law, (Cambridge: Grotius Publications Limited, 1991), 686; Antonio Cassese, *International Law in a Divided World* (New York: Oxford University Press, 1994), 141; Edip Çelik, *Milletlerarası Hukuk*, (International Law), (İstanbul: Filiz Kitabevi, 1982), 410. In this respect, Brownlie also states that the customary norm regarding the use of force is "restated and reinforced" by Article 2(4). See Ian Brownlie, *International Law and the Use of Force by States* (London: Oxford University Press, 1963), 112.

[7] Among the noteworthy examples of authoritative statements against non-Members are for example, SC Res. 82 (1950) of 25 June 1950 and SC Res. 83 (1950) of 27 June 1950 in relation to the Korean conflict, in which the Council determined a breach of the peace and called upon North Korea to withdraw forthwith its force to the 38th parallel; and GA Res. 498 (V) of 1 February 1951, which condemned the intervention of People's Republic of China in Korea as aggressive and called "upon all States and authorities to refrain from giving assistance to the aggressors in Korea."

threat or use of force. In other words, the prohibition of the threat or use of force binds all states, members and non-members alike.[8] Thirdly, in Article 35(2), non-Members are allowed to "bring to the attention of the Security Council or of the General Assembly any dispute" to which they are parties. Finally, Article 103 establishes the precedence of members' obligations under the UN Charter in the event of a conflict between the obligations of the Members under the Charter and under other international agreements. Thus, it follows that the Charter is instrumental in providing a framework for prohibiting force and elevating it to a *jus cogens* status.[9]

The *jus cogens* status of Article 2(4) is also confirmed in the *Nicaragua* judgment of the International Court of Justice (ICJ), where it referred to statements by government representatives who considered the prohibition of force in Article 2(4) as not only a principle of customary international law but also "a fundamental and cardinal principle of such law."[10] The Court also inferred the *opinio juris* of states from the consent given to numerous General Assembly resolutions that reiterated the norm of the prohibition of force,[11] in particular the 1970 *Declaration on Principles of International Law*,[12] which was adopted by consensus. In addition, the Court referred

---

[8] Hüseyin Pazarcı, *Uluslararası Hukuk Dersleri*, IV. Kitap (Lectures in International Law, Book IV) (Ankara: Turhan Kitabevi, 2000), 113; Çelik, *Milletlerarası Hukuk*, 409.

[9] Belatchew Asrat, *Prohibition of Force Under The UN Charter: A Study of Article 2(4)* (Uppsala, Sweden: Iustus Förlag, 1991), 51-52.

[10] *ICJ Reports* (1986), para. 190.

[11] See for example, GA Resols. 290 (IV), *Essentials for Peace*, 1 December 1949; 378 (V) A, *Duties of States in the Event of the Outbreak of Hostilities*, 17 November 1950; 380 (V), *Peace Through Deeds*, 17 November 1950; 2625 (XXV), *Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in accordance with the Charter of the United Nations*, 24 October 1970; 3314 (XXIX) *Definition of Aggression*, 14 December 1974; 42/22, *Declaration on the Enhancement of the Effectiveness of the Principle of Refraining From the Threat or Use of Force in International Relations*, 18 November 1987.

[12] *Declaration on Principles of International Law* asserts that "Every State has the duty to refrain in its international relations from the threat or use of force against the territorial integrity or political

to the views of the International Law Commission on the *jus cogens* character of the provisions of Article 2(4).[13] Within this context, one question relevant for the purposes of this study, arising out of the attribution of an international peremptory norm to Article 2(4), is the question of validity of the treaties of guarantee in international law, since the use of force that such treaties provide for could be argued to be against Article 2(4).[14] Such a position, for instance, was taken by the Cypriot government in the Security Council in 1964, when Turkey invoked its guarantorship rights under the terms of the Treaty of Guarantee signed in 1960. The UN reaction to Greek objections to the 1960 Treaty of Guarantee will be examined in Chapter II of Part II, within the context of interventions pursuant to a prior treaty.

Notwithstanding the consensus on the prominence of the norm of the prohibition of the use of force and its customary international law status, Article 2(4) raises questions of interpretation due to an absence of definition for the various notions stipulated in the article.

2. 1. 1. 1. The Notion of 'Force'

The prohibition of force in Article 2(4) comprises both the threat and the use of force. However, the language of Article 2(4) neither defines nor qualifies the term 'force.' The prevailing view is that the notion of 'force' in Article 2(4) does not extend to all kind of force, such as political and economic coercion, but signifies

---

independence of any State, or in any other manner inconsistent with the purposes of the United Nations. Such a threat or use of force constitutes a violation of international law and the Charter of the United Nations and shall never be employed as a means of settling international issues." GA Res. 2625 (XXV), 24 October 1970.

[13] *ICJ Reports* (1986), para. 190.

solely armed force.[15] The General Assembly *Declaration on the Principles of International Law*, which is considered to be the key interpretation of the main principles of the UN Charter, confirms this reading of force. In its interpretation of the principle of refraining from the threat or use of force in international relations, the Declaration only refers to military force. It deals with other types of coercion in the context of the general principle of non-intervention in matters within the domestic jurisdiction of a state.[16] Thus, it follows that what General Assembly was implying by its use of the term 'force' in Article 2(4) was specifically limited to armed force. In addition, the ICJ supports this narrow conception of force in the *Nicaragua* case, as it refers to this resolution for determining the scope of the prohibition of force in customary international law.[17]

Nevertheless, even when confined to the definition of armed force, the term provokes questions with respect to the uses of 'indirect' force. Included in the notion of "indirect force," are one state's allowing its territory to be used by troops of another country for fighting a third state and/or providing arms to insurgents in another country.[18] Although legal scholarship generally tends to consider this problem within the framework of defining 'intervention,' it is also relevant within the scope of Article 2(4). In this respect, the *Declaration on the Principles of International Law*

---

[14] See for example, Cassese, *International Law in a Divided World*, 141.
[15] Asrat, *Prohibition of Force Under The UN Charter*, 40; Bruno Simma (ed.), *The Charter of the United Nations, A Commentary* (Oxford: Oxford University Press, 1994), 112; Oscar Schachter, *International Law in Theory and Practice* (Dordrecht, The Netherlands: Martinus Nijhoff Publishers, 1991), 111; Cassese, *International Law in a Divided World*, 137; Pazarcı, *Uluslararası Hukuk Dersleri*, 114.
[16] GA Res. 2625 (XXV), 24 October 1970.
[17] *ICJ Reports* (1986), para. 191.
[18] Simma (ed.), *The Charter of the United Nations*, 113; Pazarcı, *Uluslararası Hukuk Dersleri*, 114.

provided specifications regarding the prohibition of the use of indirect force in its section dealing with the prohibition of force more generally:

> "Every state has the duty to refrain from organizing or encouraging the organization of irregular forces or armed bands, including mercenaries, for incursion into the territory of another state. Every state has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another state or acquiescing in organized activities within its territory directed towards the commission of such acts, when the acts referred to in the present paragraph involve a threat or use of force."

On the other hand, the ICJ in its *Nicaragua* judgment of 1986, reiterates the *Declaration on Principles of International Law*, reaffirming that the above formulation of indirect force is within the scope of Article 2(4).[19] As a result, it appears that the notion of "indirect force" is also included in the prohibition of the use or threat of force.

2. 1. 1. 2. Threat of Force

The prohibition of force in Article 2(4) also includes the prohibition of the threat of force. In this respect, Schachter points out that Article 2(4) forbids "a threat to use military action to coerce a State to make concessions."[20] However, legal opinions have given far less consideration to what is meant by the "threat of force" than to the use of actual force. Brownlie describes "threat of force" as "an express or implied promise by a Government of a resort to force conditional on non-acceptance of

[19] While describing the arming and training of the Contras by the United States as acts amounting to the threat or use of force, the Court did not characterize the mere supply of funds to them as a use of force. It should be noted, however, that the Court stated that supplying funds constituted an act of intervention in the internal affairs. *ICJ Reports* (1986), para. 228.
[20] Schachter, *International Law*, 111.

certain demands of that Government."[21] Another author notes that "[t]he relevant feature of threat as a form of coercion is not so much the kind of force applied, but rather the purpose and outcome or the threat: a genuine reduction in the range of choices otherwise available to states."[22]

The *Declaration on Principles of International Law* acknowledges 'threat' as an instrument of coercion, by declaring that "[t]he territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force." Therefore, it can be stated that Article 2(4) includes the threat of force, which may possibly result in violation of a particular state's territorial integrity and political independence.[23] Nevertheless, since most threats of force have generally been justified on the basis of the right of self-defense, there seems to be a higher degree of tolerance towards the threat than the actual use of force in state practice.[24] This tolerance can also be said to result from the general recognition of the difficulty to prove coercive intent in an international system characterized by power disparities and the consequent dominant and subordinate relationships between states. Notwithstanding this, scholars agree that an open and direct threat of force to compel another state to give up territory or yield considerable political concessions is to be considered unlawful under Article 2(4).[25]

---

[21] Brownlie, *International Law*, 364.
[22] Romano Sadurska, "Threats of Force," *American Journal of International Law* 82:2 (1988), 242.
[23] Asrat, *Prohibition of Force Under The UN Charter*, 138-139.
[24] Simma (ed.), *The Charter of the United Nations*, 118.
[25] Schachter, *International Law*, 111; Sadurska, "Threats of Force," 239.

2. 1. 1. 3. The Frame of "International Relations"

Article 2(4) prohibits the threat or use of force *in international relations* between states. Hence, the proscription does not include the domestic use of force.[26] In other words, the provisions of Article 2(4) do not deprive states of their right to take measures to maintain order within their own jurisdictions. Accordingly, states may resort to force in suppressing riots and insurrections, and may use it to punish dissenters without breaching Article 2(4).[27] More specifically, the very framework of international relations implies that the provision does not apply to civil wars.[28] This reflects the general agreement that internal conflicts are beyond the realm of international law, since the latter is meant to govern the relations between states. Nevertheless, the case ceases to be exclusively a matter of internal affairs, if the internal use of force is condemned and declared to constitute a threat to international peace and security by the UN.[29] In this respect, practice shows that the UN has increasingly come to accept internal disorders as potential "threats to international peace and security," and thus matters of international concern. However, such characterization by the UN and its resultant involvement in internal conflicts is a subject that should be assessed in the context of Article 2(7) which pertains to the Organization's intervention in matters within domestic jurisdiction, and thus is beyond the confines of Article 2(4). What is relevant in regard to Article 2(4) is the question of whether a state's use of force and its intervention in a civil conflict in another state violate the general prohibition on the use of force or not. According to traditional doctrine in international law, the stance of outside powers with respect to

[26] Shaw, *International Law*, 720.
[27] *Ibid.*, 688; Cassese, *International Law in a Divided World*, 137.

a civil conflict must depend on the scale of the conflict. If the conflict is characterized as having a status of 'rebellion,' then the government in power is still considered to be legal and it can suppress the rebellion according to its domestic regulations. Therefore external assistance to the government upon request is permitted, but aid to the rebels is prohibited. In this sense, intervention in favor and at the request of the government does not contravene Article 2(4).[30] If, on the other hand, the rebel forces have taken control of a sufficient area of the territory and have obtained formal recognition of a status of 'belligerency,' external states must observe a position of 'neutrality,' as they would in any other international conflict. Thus, traditional legal doctrine appears to permit third party interventions in a civil war only to assist the legitimate government, but prohibits giving support to the rebels.[31] As one scholar puts it, this shows "*a priori* presumption of legitimacy to the rights of existing governments, and of illegitimacy to all rebel forces."[32] The difficulty arises, however, from the lack of objective criteria regarding how outside governments recognize internal disturbances. In general, international law proves to be limited in determining the status of an internal strife.[33] Consequently, the fact that external states have a considerable amount of discretion has resulted in the portrayal of the civil conflicts largely according to political convenience.

---

[28] Simma (ed.), *The Charter of the United Nations,* 116.
[29] Asrat, *Prohibition of Force Under The UN Charter*, 70-71.
[30] Kelsen, *The Law of the United Nations*, 934.
[31] Hersch Lauterpacht (ed.), L. Oppenheim, *International Law,* 305. For a detailed analysis of international law of internal war and concise elaboration of the regulation of the duties of states with respect to internal conflict depending on the status accorded to the factions in conflict, see Richard A. Falk, *Legal Order in a Violent World* (Princeton: Princeton Univeristy Press, 1968), 117-127. See also, Rosalyn Higgins, "International Law and Civil Conflict" in Evan Luard (ed.), *The International Regulation of Civil War* (New York: New York University Press, 1972), 170-171; Ann Van Wyen Thomas and A. J. Thomas, Jr., *Non-intervention, The Law and Its Import in the Americas* (Dallas: Southern Methodist University Press, 1956), 215-221; and Ali L. Karaosmanoğlu, *İç Çatışmaların Çözümü ve Uluslararası Örgütler (The Resolution of Internal Conflicts and the International Organizations)* (İstanbul: Boğaziçi Üniversitesi, 1981), 15-20.

Within the UN framework, there have been various attempts to lay down a set of rules concerning the rights and duties of states with respect to internal conflict.[34] In 1949, the *Essentials of Peace* Resolution called on all nations to "refrain from any threats or acts, direct or indirect, aimed at impairing the freedom, independence or integrity of any state, and fomenting civil strife and subverting the will of the people in any state."[35] In 1950, a further resolution condemned intervention or assistance in civil conflict aimed at 'changing' the legitimate government by the threat or use of force.[36] Similarly, another resolution, in 1965, declared that no state should "interfere in the civil strife of another state."[37] More authoritatively and in a more detailed fashion than any of these, the *Declaration on Principles of International Law* affirms in the context of the use of "indirect force," that:

> "Every State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist activities in another State...the acts referred to in the present paragraph involve a threat or use of force."[38]

The resolution contains a similar provision in the subsequent principle concerning the duty of non-intervention in matters within the domestic jurisdiction, reiterating that no state may "interfere in civil strife" in another state.[39]

---

[32]Evan Luard, "Civil Conflicts in Modern International Relations" in Luard (ed.), *The International Regulation of Civil Wars*, 22.
[33] Falk, *Legal Order in a Violent World*, 119.
[34] In this regard, it should be noted that some pre-Charter attempts were made as well. For example, in 1900, the Institute of International Law formulated rules regarding the duties of states in relation to insurgency, and in 1928, a number of Latin American states signed the Convention on the Duties of Rights and States in the Event of Civil Strife, which restricted the right of intervention extensively. See Luard, "Civil Conflicts in Modern International Relations," 21.
[35] GA Res. 290 (IV), 1 December 1949.
[36] GA Res. 380 (V), 17 November 1950.
[37] GA Res. 2131 (XX), *Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty*, 21 December 1965.
[38] GA Res. 2625 (XXV), 24 October 1970.
[39] *Ibid.*

When civil strife involves the right to self-determination -particularly in states under colonial rule- the use of force by the colonial power to suppress rebels is generally defined not as a matter of internal affairs, but rather in the context of the principle of prohibition of the use of force in international relations.[40] It thus raises the question of whether intervention in this kind of civil conflict by third party states is compatible with the spirit of Article 2(4) and the principle of non-intervention. In this respect, both the *Declaration on Principles of International Law* and the UN's *Definition of Aggression* assert that every state has the duty to "refrain from any forcible action" which would impede the exercise of self-determination and that such peoples are entitled to "receive support" for their struggle to that end.[41] Hence, civil conflicts entailing self-determination appear to provide the states with a possible justification of using force on behalf of the peoples seeking that end.

2. 1. 1. 4. Territorial Integrity and Political Independence

The terms "territorial integrity" and "political independence" is commonly taken to refer to "the total of legal rights which a state has."[42] A good definition, for example, describes these terms as:

> "embracing in summary reference the most important bases of state power, the values or interests whose impairment and destruction are sought to be prohibited and, correlatively, whose necessary protection by coercion is permitted."[43]

---

[40] Pazarcı, *Uluslararası Hukuk Dersleri*, 112-113.
[41] GA Res. 2625 (XXV), 24 October 1970 and GA Res. 3314 (XXIX), 14 December 1974. Third party involvement in such cases whereby right of self-determination is in question shall be explored in detail in the Chapter I of Part III.
[42] Brownlie, *International Law*, 268. See also the sixth principle of GA Res. 2625 (XXV), 24 October 1970, which states that "[e]ach State enjoys the rights inherent in full sovereignty."
[43] M.S. McDougal and F.P. Feliciano, *Law and Minimum Public Order* (1961), 177, quoted in Asrat, *Prohibition of Force Under The UN Charter*, 146.

In practice, these terms are generally emphasized with the addition of notions such as 'sovereignty' and 'inviolability.' For example, *Definition of Aggression*, adopted by consensus in 1974, refers specifically to "sovereignty, territorial integrity or political independence." The resolution puts forward a broad conception of prohibition of armed intervention and aggression, which includes not only invasions, but also attacks or military occupations; sending armed bands or mercenaries to carry out violent acts; shelling another state's territory; blocking its ports; and attacking the forces of another state.[44] Thus, it can be inferred that the prohibition of force in Article 2(4) does not only refer to the use of force aimed at termination of a state's territorial existence or the status of its political independence. Rather, it extends protection to the fundamental rights of states. In this sense, the prohibited force in Article 2(4) covers any kind of trans-border use of armed force, regardless of the intention of depriving that state of part of its territory. Hence, in terms of its legal effect, scholars argue that the term 'integrity' in the provision signifies 'inviolability,' prohibiting any kind of forcible cross-frontier activity.[45] Paragraph 7 of the Charter's preamble further reinforces this conclusion. It articulates the goal of ensuring that "armed force shall not be used, save in the common interest." On the other hand, the judgment of the ICJ in the *Corfu Channel* case, which denied the British line of reasoning according to which British minesweeping operation in Albanian territorial waters did not violate Albanian sovereignty as it neither threatened its territorial integrity nor its political independence (nor caused territorial loss or harmed the political independence of Albania), suggest that the prohibition of

[44] GA Res. 3314 (XXIX), 14 December 1974.
[45] Simma (ed.), *The Charter of the United Nations*, 117.

force laid down in Article 2(4) is all-embracing. It is therefore not restricted to the protection of territorial integrity or political independence in its strictest sense.[46]

In sum, Article 2(4) can be said to presume the illegality of any unilateral use of force not authorized by the UN. In this sense, it is the corner-stone of the rule of non-intervention between states. The norm it establishes has universal and imperative applicability in that it is consistently reaffirmed in a number of international documents as well as in General Assembly and Security Council resolutions. Although the content of the article remains debated, it is generally interpreted as pertaining to threat or use of armed force, employed directly or indirectly against another state.

2. 1. 2. Article 2(7)

With respect to the interference of the United Nations, as an organization, within the internal affairs of the member states, Article 2, paragraph 7 directs the organs of the UN to respect domestic affairs of states and lays down a principle of non-intervention. It reads:

> "Nothing in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter but this principle shall not prejudice the application of enforcement measures under Chapter VII."

[46] The Court did not specifically refer to this particular British claim in its judgment. However, the rejection of the British plea can be inferred from the unanimous decision of the Court that the British action constituted a violation of Albanian sovereignty. See *ICJ Reports* (1949), *Corfu Channel Case*, (Merits), 35.

The principle of non-intervention stipulated by Article 2(7), is not the same principle as the duty of non-intervention of states established by general international law.[47] Article 2(7) refers specifically to the Organization's intervention, rather than the intervention of one state in another's affairs.[48] In other words, it does not refer to a general prohibition of intervention, but rather declares "a delimitation of competence between the state and the organs of the UN."[49] In this sense, the terms "[n]othing shall authorize the United Nations to intervene" point to an "organizational rule of conduct for the organs of the UN."[50] Thus, it represents "an interpretative guideline" for UN organs in "dealing with matters that are essentially within the domestic jurisdiction of a state."[51] It is argued that Article 2(7) can be considered a "life-saver" clause for member states, which provides them with a sort of a veto right that they can employ for restricting the jurisdiction of UN organs.[52] Consequently, unilateral interventions are not subject to Article 2(7), and their legality is to be established through reference to general international law.[53]

Article 2(7) is the next generation to Article 15(8) of the League Covenant,[54] which set out limitations on the functioning of the League of Nations with respect to the domestic jurisdiction of member states. However, it is distinguished from its

---

[47] Kelsen, *Principles of International Law*, 63; Ian Brownlie, *Principles of Public International Law* (Oxford: Oxford University Press, 1990), 553.
[48] Kelsen, *The Law of the United Nations*, 770.
[49] Simma (ed.), *The Charter of the United Nations*, 150.
[50] *Ibid*, 150.
[51] *Ibid*, 143.
[52] Seha L. Meray, *Devletler Hukukunda Birleşmiş Milletler Antlaşması ve Tatbikatına Göre Milli Yetki Meselesi (The Issue of Domestic Jurisdiction According to the United Nations Charter and Practice in International Law)* (Ankara: İstiklal Matbaacılık ve Gazetecilik Koll. Ort., 1952), 45.
[53] Simma (ed.), *The Charter of the United Nations*, 150.
[54] Article 15(8) of the Covenant reads as follows: "If the dispute between the parties is claimed by one of them, and is found by the Council, to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council shall so report, and shall make no recommendation as to its settlement."

predecessor by substituting the word 'essentially' for 'solely,' by omitting the reference to "international law" as a criterion for determining matters of domestic jurisdiction, and by not specifying any particular UN organ as the competent authority for establishing jurisdictional issues.

There are three rules embodied in Article 2(7). The first provision, as noted above, is addressed to the organs of the UN. It directs them to respect "domestic affairs." The second rule is addressed to the members of the UN. It maintains that they should not submit matters that are essentially within the domestic jurisdiction to the UN for a peaceful dispute settlement. Thus, the UN organs are guided to claim competence to consider disputes only on matters under international law, as opposed to questions that are regarded to be within the exclusive jurisdiction of a state. The final component of the article specifies for the only exception to the rule of non-intervention by the United Nations in the domestic affairs of a state. It thus establishes a limitation of domestic jurisdiction in relation to the enforcement measures contained in Chapter VII of the Charter.[55]

Among other things, the difficulties arising out of the terms of Article 2(7), surround the definition of the terms "not to intervene" and "matters which are essentially within the domestic jurisdiction." As Goodrich, Hambro and Simons assert:

> "Ambiguity results from the fact that a permissive view with respect to what the Organization may do can be the result of either of a restrictive definition of intervention or restrictive interpretation of 'essentially within the domestic jurisdiction.'"[56]

[55] Simma (ed.), *The Charter of the United Nations,* 149.
[56] Leland M. Goodrich, Edvard Hambro, and Anne Patricia Simons, *Charter of the United Nations: Commentary and Documents*, Third Edition (New York: Columbia University Press, 1969), 67.

The fact that Article 2(7) offers no specific criteria for determining what is to be regarded as essentially domestic or what amounts to intervention has consequently provided United Nations organs with a good deal of leeway in applying these terms to particular cases.[57] Thus, it is necessary to consider the implied criteria for permissible United Nations' intervention within the sphere of domestic affairs, with reference to the practices of the UN.

2. 1. 2. 1. The Scope of the United Nations' Jurisdiction: Ways and Means Utilized for Overcoming the Prohibition of Intervention in Domestic Jurisdiction

Article 2(7) proscribes intervention, but does not prohibit all actions and decisions of the United Nations relating to domestic affairs.[58] Therefore, confining the meaning of 'intervention' to describe instances of coercive interference by the United Nations would be misleading. As a result, the analysis of the concept of intervention and the meaning of "to intervene" as set out in Article 2(7) should be extended to those acts of the United Nations, which fall short of enforcement action. In this respect, notwithstanding disagreements on various issues, there are some well-established principles which set the parameters of the degree of UN involvement in domestic matters. Thus, the question arises concerning which activities lying outside the scope of Chapter VII may be claimed as falling within UN jurisdiction, and in what ways

[57] Oscar Schachter, "The United Nations and Internal Conflict" in John Norton Moore (ed.), *Law and Civil War in the Modern World* (Baltimore: The Johns Hopkins University Press, 1974), 402. For detailed elaboration of the latitude assumed by the United Nations organs, see Rosalyn Higgins, *The Development of International Law Through The Political Organs of the United Nations* (London: Oxford University Press, 1963), 64-130.
[58] Schachter, "The United Nations and Internal Conflict," 421.

can the UN bypass the prohibition of intervention in domestic affairs as stipulated in Article 2(7).

The history of the UN's practices demonstrates that the Organization may undertake either indirect or direct intervention in the domestic affairs of a state. It may interfere in the domestic affairs of a state without carrying out an action on the territory of the state in question. Included in this kind of interventions are activities like putting the issue on the agenda of any UN body, discussing the issue in that forum, and making recommendations. With respect to such indirect interventions, the Organization's practice has been consistent. Despite the occasional objection from the concerned states, UN organs have considered and discussed the issues in question automatically.[59]

In making recommendations and adopting resolutions expressing a certain position on an internal matter, UN bodies have considered themselves competent to the extent that an "international concern" has been expressed on a given matter. In other words, while the matter at hand may not be deemed as one constituting a threat to or breach of peace (meriting enforcement action under Chapter VII), the existence of international ramifications "may none the less serve as a basis for jurisdiction."[60] Thus, any matter that is regarded as a potential threat to the peace can be proclaimed

[59] Meray, *Devletler Hukukunda Birleşmiş Milletler Antlaşması*, 181; Ali L. Karaosmanoğlu, "Birleşmiş Milletler Andlaşmasının 2 inci Madde 7 inci Fıkrasının İç Savaşlar Bakımından Yorumu" (The Interpretation of Article 2(7) of the United Nations Charter With Respect to Civil Wars), *Siyasal Bilgiler Fakültesi Dergisi* (Journal of Faculty of Political Science) 3 (1972), 193.
[60] Higgins, *The Development of International Law*, 77.

to be of "international concern," which in turn removes it from the operation of Article 2(7), and more specifically, from the scope of "domestic jurisdiction."[61]

It was in relation to the Spanish question that, in 1946, the concept of "international concern" was first elaborated. While it was recognized in the Security Council that the nature of a regime was unquestionably a matter of domestic jurisdiction, a resolution was adopted to set up a sub-committee to determine whether the situation in Spain "has led to international friction and does endanger international peace and security."[62] This resolution was significant, for it established that investigations to determine facts, even on a matter generally recognized to be within domestic jurisdiction, did not in itself constitute an intervention, and as such, did not fall within the perview of Article 2(7). The sub-committee found that although the situation in Spain was not "an existing threat within the meaning of Article 39," it constituted "a potential menace to international peace," the continuance of which was "likely to endanger the maintenance of peace and security within the meaning of Article 34."[63] Accordingly, the sub-committee determined that the Security Council had no jurisdiction to "direct or authorize enforcement measures under Article 40 or 42"[64] Rather, the report was of the opinion that the matter should be dealt with by the Security Council within the context of Chapter VI of the Charter, which lays out measures for peaceful settlement and adjustment.[65] Despite the failure of subsequent resolutions, the Spanish question initiated the idea that "matters *prima facie* of

---

[61] Ali L. Karaosmanoğlu, "UNFICYP and The Problem of Consent" in Reşat Arım (ed.), *Cyprus and International Law* (Ankara: Foreign Policy Institute, 2002), 98; Higgins, *The Development of International Law*, 77.
[62] SC Res. 7, 29 April 1946. The resolution was adopted by 10 votes to none, with one abstention (USSR).
[63] *UN Yearbook* 1946-1947, 348.
[64] *Ibid.*

domestic jurisdiction may be of international concern in certain circumstances."[66] Henceforth, the idea of "international concern" was to become a major element in giving the Security Council the authority to transcend the only exception to Article 2(7), namely the application of enforcement measures under Chapter VII, opening before "the Organization a wide field of possibilities in situations that had been hitherto deemed to fall within the domestic jurisdiction."[67] More precisely, the concept of "international concern," which is broader than that of breach of, or threat to, international peace, seems to indicate that threats for less severe than those requiring enforcement measures may pave the way for action despite the limiting provisions of Article 2(7).

The element of "international concern" as the basis of jurisdiction can be observed in various General Assembly resolutions, for example, in those dealing with apartheid in South Africa. In a series of resolutions related to the issue, the General Assembly maintained that apartheid constituted "a grave threat to the peaceful relations between ethnic groups in the world;"[68] was "prejudicial to international harmony;"[69] and had "led to international friction."[70] Likewise, with respect to the Angolan situation, the General Assembly stated that it was "likely to endanger international peace and security,"[71] backed up by the Security Council, which found that the continuation of Angolan situation constituted "an actual and potential cause of

---

[65] *Ibid.*, 348.
[66] Higgins, *The Development of International Law*, 79.
[67] Karaosmanoğlu, "UNFICYP and The Problem of Consent," 98.
[68] GA Res. 820 (IX), 14 December 1954.
[69] GA Res. 1375 (XIV), 17 November 1959.
[70] GA Res. 1598 (XV), 13 April 1961.
[71] GA Res. 1603 (XV), 20 April 1961.

international friction."[72] Thus, it can be said that the Organization has shown a tendency to link domestic situations with international peace on the grounds of "international concern."[73]

Despite the reference made to this concept in various resolutions and decisions for declaring UN jurisdiction, the criterion of "international concern" remains highly vague, largely because of the political nature of such a claim. The decisions of UN organs are political, in the conventional meaning of the term, simply by virtue of the composition of its members, which are governments. Such decisions are most often the outcome of a coalition of national interests, mirroring considerations of benefits and costs of the proposed measures.[74] Nonetheless, governments usually refer to the UN Charter to justify their positions and selected course of actions. In this respect, the broader goal of the UN, particularly the aim of maintaining international peace and security, arms UN organs with considerable latitude to deal with issues falling under domestic jurisdiction. In other words, any matter can find its justification in one or another of the United Nations aims. Thus, such criteria are the "product of political processes and reflect a particular combination of circumstances."[75]

This said, from its inception, the UN has intervened in domestic affairs of states more directly as well. In this respect, the Organization has either embarked on actions within the territory of a state or attempted to influence the military, political and economic affairs of a state. Study, investigation and inquiry of any subsidiary

[72] SC Res. 163, 9 June 1961.
[73] Karaosmanoğlu, "UNFICYP and The Problem of Consent," 98.
[74] Schachter, "The United Nations and Internal Conflict," 402.
[75] *Ibid.* For a similar view, see also, Karaosmanoğlu, "UNFICYP and The Problem of Consent," 98.

body or commission carried out in accordance with Article 34 of the UN Charter[76] are among the types of non-military intervention practiced by the United Nations.[77] This UN practice reveals that activities outside the territory of the state are not considered to be prohibited by Article 2(7), to the extent that there is an "international concern" as explained above. The proscription against UN intervention in domestic affairs seems to crystallize when a fact-finding mission is to be undertaken on the spot, for states are not obliged to admit the Organization's investigative and observational activities on their territories. It is an accepted rule of international law that all the activities assumed on the territory of a given state by an international organization constitute a violation of its sovereignty.[78] In such cases, the decisive element in overcoming the prohibition of intervention other than the exception provided in Article 2(7) (i.e. enforcement actions under Chapter VII), appears to be the 'consent' of the legitimate government to the inquiry on its territory.

For the purposes of the study, the most important issue within the terms of Article 2(7) concerns the deployment of foreign military units in a sovereign state and taking military action within the territory of that state. In this respect, one can make a distinction between the non-coercive and coercive military actions of the UN.[79] Since coercive intervention may be interpreted as an enforcement action, (which is

---

[76] Article 34 reads: "The Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security."

[77] It has to be noted that non-military interventions can be coercive too. In this respect, the economic measures as foreseen by Article 41, which stipulates measures short of use of armed force, represent an example.

[78] Karaosmanoğlu, "UNFICYP and The Problem of Consent," 99.

[79] Karaosmanoğlu, "Birleşmiş Milletler Andlaşmasının 2 inci Madde 7 inci Fıkrasının İç Savaşlar Bakımından Yorumu," 192.

excepted from the prohibition of domestic jurisdiction), the question arises as to what qualifies as non-coercive military action and the conditions under which they would not be considered in contravention of Article 2(7). The United Nations' actions are not considered coercive as long as the aim is not to compel the parties to a conflict to agree on a certain solution or to change the political and military balance in favor of one party at the expense of the other.[80] In this sense, peacekeeping operations may be regarded as actions involving no forcible measures, since they require the "consent of the protagonists, impartiality on the part of the United Nations Forces, and resort to arms only in self-defense."[81] Thus, it can be said that the 'consent' of a state or of the parties to a dispute within a state, in cases of domestic conflict is not only an important political factor ensuring the cooperation of the parties with the peacekeepers, but also an essential legal requirement to sidestep the prohibition of intervention outlined in Article 2(7).[82]

It follows from the above, that the essential steps the UN must assume in overcoming the prohibition of interference in domestic jurisdiction in Article 2(7) are a declaration of "international concern" on a given matter and 'consent' of the state at issue. While "international concern" is sufficient for the placement of a case or situation on the agenda of any UN organ, discussion, adoption of recommendatory resolutions on a matter considered as domestic as well as institution of missions of inquiry outside the territory of the state in concern; it is not an adequate basis for legalizing on-spot inquiries and peacekeeping operations. In the latter instances, the consent of the state appears to be a critical element in determining the Organization's

[80] *Ibid.*

competence. The requirement of consent for such involvement follows from the political nature of the concept of "international concern," which can undermine the legal relevance of Article 2(7), since it is fairly easy for UN bodies to allege "international concern" regarding any variety of domestic disorder.

2. 1. 2. 2. Scope and Content of Domestic Jurisdiction

The issue of intervention is raised only in matters regarded as domestic. If it lies outside this perview, then the prohibition laid down in Article 2(7) does not apply. Thus, another difficulty with respect to the interpretation of Article 2(7) is related to the issue of the scope and content of "domestic jurisdiction," for its definition is by no means self-evident. In the twenty-six years of League practice, only one case shed light on the limits defining this term. In its advisory opinion to the League Council on the matter of the *Nationality Decrees issued in Tunis and Morocco*, the Permanent Court of International Justice stated:

> "The question whether a certain matter is or is not solely within the jurisdiction of a state is an essentially relative question; it depends upon the development of international relations."[83]

The Court also asserted that even in the case of a matter which was not principally governed by international law,

> "the right of a state to use its discretion is nevertheless restricted by obligations which it may have undertaken towards other states. In such a case, jurisdiction which, in principle, belongs solely to the state, is limited by rules of international law." [84]

---

[81] *The Blue Helmets: A Review of United Nations Peace-Keeping* (New York: The United Nations, 1996), 4.
[82] Karaosmanoğlu, "UNFICYP and The Problem of Consent," 99.
[83] *PCIJ Report*, Ser. B, No. 4 (1923).
[84] *Ibid.*

Two specific rules were derived out of this formulation. Firstly, the content of domestic jurisdiction does not comprise a neat and rigid list of issues that exclusively belongs to the domain of a state. Its precise scope is to be determined rather on the basis of the facts of each case, along with the prevailing state of international relations. Secondly, the domestic jurisdiction of a state is restricted by the commitments and obligations that it might have deliberately assumed towards other states under a specific treaty or agreement.[85] Thus, international law, created through multilateral conventions and bilateral treaties, "removes the subjects regulated in these conventions" from domestic jurisdiction.[86]

The UN Charter itself does not contain a definition of the term "domestic jurisdiction." Indeed, at the San Francisco Conference (1945), the issue of the definition of the term was not raised.[87] This omission did not stem from an implied consensus on its definition. On the contrary, according to one view, Article 2(7) "was deliberately made ambiguous in recognition of the fact that it dealt with an issue so difficult of solution as to be better left unsolved."[88] Arguing against making Article 2(7) more precise legally, the US representative, John Foster Dulles argued in favor of "making the provision more a political principle than a legal formula"[89] and

---

[85] M. S. Rajan, "Defining 'Domestic Jurisdiction': Is It Necessary? Is It Feasible? Is it Useful?," *The Indian Journal Of International* Law (New Delhi), 1:1 (July 1960), reprinted in M. S. Rajan, *United Nations and World* Politics (New Delhi: Har-Anand Publications, 1995), 147-148.
[86] Simma (ed.), *The Charter of the United Nations*, 152.
[87] Except for Uruguay delegation, no other delegation made any specific proposals regarding definition of the jurisdictional limits of the proposed organization. For the arguments of various delegations at San Francisco Conference with respect to Article 2(7), see Meray, *Devletler Hukukunda Birleşmiş Milletler Antlaşması*, 40-42.
[88] Francis O. Wilcox and Carl M. Marcy, *Proposals For Changes in the United Nations* (Washington D.C., 1955), 263, quoted in Rajan, *United Nations and World* Politics, 164.
[89] Rajan, *United Nations and World* Politics, 148.

contended that it would evolve in parallel to "the state of the world, the public opinion of the world and the factual interdependence of the world."[90]

Consequently, it can be said that domestic jurisdiction is a relative concept: its extent may be limited or expanded in parallel to the changing principles of international law.[91] For example, in its judgment on the *Barcelona Traction* case, the ICJ determined that respect for human rights was a legal obligation *erga omnes*.[92] Similarly, the document which came out of the Moscow meeting of the Conference on Human Dimensions of the CSCE of 4 October 1991, stated that:

> "The participating States emphasize that issues relating to human rights, fundamental freedoms, democracy and the rule of law are of international concern, as respect for these rights and freedoms constitutes one of the foundations of the international order. They categorically and irrevocably declare that the commitments undertaken in the field of the human dimension of the CSCE are matters of direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned."[93]

One other problem related to the interpretation of the "domestic jurisdiction" clause in the text of Article 2(7) is the importance attached to the phrase "matters *essentially* within the domestic jurisdiction." While the Covenant provision referred to "a matter which by international law is *solely* within the domestic jurisdiction," the Charter provision substituted 'essentially' for 'solely' and left out the "international law"

---

[90] Quoted in Rajan, *United Nations and World Politics*, 148-149.
[91] Shaw, *International Law*, 395.
[92] *ICJ Reports* (1970), *Barcelona Traction, Light and Power Co. Case*, paras. 33-34. The Latin expression "erga omnes" means "towards all." Within the context of the concept of obligations *erga omnes*, the debated question is "whether the international community can be bound by obligations *erga omnes* and be the bearer of the corresponding rights." For a detailed study of international obligations *erga omnes*, see Maurizio Ragazzi, *The Concept of International Obligations Erga Omnes* (Oxford: Clarendon Press, 1997).
[93] CSCE, *Document of the Moscow Meeting of the Conference On the Human Dimension of the CSCE*, 10 September-15 October, 1991, http://www.osce.org/docs/english/1990-1999/hd/mosc91e.htm.

criterion to establish whether a matter falls within domestic or international jurisdiction. Scholars content that the substitution was meant to restrict the jurisdiction of the Organization vis a vis the member states. In this respect, Vincent argues that, the principle of non-intervention as laid down in Article 2(7), aims to "preserve the state against the emergence of a superstate."[94] Another scholar observes that Article 2(7) is "the quintessence of the tendency of the sovereignty dogma to resist progress."[95] Yet, another commentator notes that there are no matters that can be classified by nature neither as solely nor essentially domestic. It is only when there is no customary or contractual international law regulating an issue then that matter can be said to be solely, but not essentially, within the domestic jurisdiction of a state. This implies that the question can only be resolved by reference to "international law." However, even if a state is bound by a legal obligation under international law, that is to say, even if the matter is not considered to be solely an issue of domestic jurisdiction, a state may still claim that this matter is 'essentially' within its domestic jurisdiction. In consequence, it may be presumed that the state concerned has an obligation only under general international law or with respect to a specific treaty (if it refers to the matter in question), but not under the law of the Charter.[96] Thus, the term 'essentially' ended up broadening the scope of domestic jurisdiction.[97] In other words, the replacement of the term 'solely' with the term 'essentially' has made the content of "domestic jurisdiction" substantially more flexible and vague.

---

[94] Vincent, *Nonintervention*, 235.
[95] Alf Ross, *Constitution of the United Nations* (Copenhagen: Ejnar Munksgaard, 1950), 129, quoted in Vincent, *Nonintervention*, 236.
[96] Kelsen, *The Law of the United Nations*, 776-779.
[97] Meray, *Devletler Hukukunda Birleşmiş Milletler Antlaşması* 53.

Still, another view argues that Article 2(7) is a reflection of the principles of states' right to choose their own political, economic, social and cultural systems without external interference within the community of politically equal states. In this respect, it is argued that questions relating to a state's governmental system appear to be the only matters that lie solidly within the domestic sphere in their essence. Even then, this holds on the condition that the state can "claim legitimacy in terms of the right to self-determination of the people living in that territory, i.e. by virtue of a representative government, and by respect for human rights."[98]

Unlike the corresponding provision of the Covenant of the League of Nations (Article 15(8)), Article 2(7) did not designate international law as reference for defining the parameters of domestic jurisdiction. At the San Francisco Conference, Mr. Dulles explained the reason for the omission by pointing out that international law was subject to constant change and thus evaded definition.[99] On the other hand, the Australian delegate, Dr. Evatt argued for the omission on the opposite ground, stating that mention of international law in the provision would be redundant, since there was no other possible standard for determining the nature of a jurisdiction.[100] One commentator asserts that Article 2(7) was intended to preserve "international law at its present stage" and resist " a further development of it through the efforts of the United Nations to regulate those things which are now abandoned, in anarchistic fashion, to the struggle for political power."[101] Nonetheless, other scholars argue that the significance of the criterion of international law should not be exaggerated. First,

---

[98] Simma (ed.), *The Charter of the United Nations,* 152. Simma argues that these criteria can be inferred from *The Declaration on Friendly Relations.*

[99] Quoted in D. J. Harris, *Cases and Materials on International Law*, (London: Sweet & Maxwell, 1998), 973.

[100] Meray, *Devletler Hukukunda Birleşmiş Milletler Antlaşması*, 49.

because, international law has not offered a precise definition of the term domestic jurisdiction; and second, no specific rules exist in general international law for determining the nature of jurisdictions.[102] Another view for not overstating the absence of the international law criterion holds that the omission was simply a matter of style.[103] However, one might infer that the decisive factor in the determination of matters within domestic jurisdiction was intended to be "political and circumstantial, rather than exclusively or constantly be of a legal character."[104]

In the practice of the United Nations, the issue of whether a matter falls within a state's jurisdiction arose in a number of different cases. Although one can point to certain generalizations from the practice, its interpretation remains uncertain due to the influence of political factors.

2. 1. 2. 3. Authority Determining Competence

Yet another problem with the interpretation of Article 2(7) is the question of authority, that is, deciding who is competent to determine whether a matter is essentially within the domestic jurisdiction of a state or within that of an organ of the UN in specific instances. Article 2(7) does not contain any provision to delegate this power to any organ of the UN. The non-inclusion of a competent authority has given

---

[101] Ross, quoted in Vincent, *Nonintervention*, 235.
[102] See for example, Rajan, *United Nations and World* Politics, 147. For an opposite view that in fact domestic jurisdiction has a clear meaning in international law, in that it refers to those matters where a state's discretion is not limited by obligations imposed by international law, see Akehurst, *A Modern Introduction to International Law*, 169.
[103] Meray, *Devletler Hukukunda Birleşmiş Milletler Antlaşması*, 49.
[104] M. S. Rajan, "United States Attitude Towards Domestic Jurisdiction in the United Nations," *International Organization* (Boston) 13:1 (1954), reprinted in M. S. Rajan, *United Nations and World Politics* (New Delhi: Har-Anand Publications, 1995), 215.

way to two contrary views: one arguing that each member decides whether the matter in question is essentially within its domestic jurisdiction,[105] and the other, that the organs of the UN, in the exercise of their individual functions, are the competent authorities for such determinations.[106] For example, in 1954 Greece requested that the item "Application under the auspices of the United Nations, of the principle of equal rights and self-determination of peoples in the case of the population of the island of Cyprus" be placed on the agenda of the General Assembly's ninth session.[107] The British representative argued that the matter fell essentially within the domestic jurisdiction of the United Kingdom, since Cyprus was a British possession. In support of the British claim, the Turkish representative maintained that Article 2(7) of the Charter precluded discussion of the Cyprus question in the General Assembly because a question of domestic jurisdiction was involved.[108] By Resolution 814 (IX), the Assembly decided not to consider the item.[109] The following year, the Assembly declined a similar Greek request to include the item on its agenda.[110] Finally, however, in 1956, the UK requested that the Greek complaint should be discussed together with a compliant of its own charging Greece for giving support for terrorism in Cyprus.[111] With respect to jurisprudence regarding the issue, the ICJ confronted with pleas to "domestic jurisdiction" on number of occasions. For example, in the *Interhandel* case, the United States invoked the "domestic jurisdiction" reservation, which excluded from its acceptance of the compulsory

---

[105] Kelsen, *The Law of the United Nations*, 783-784.
[106] Alf Ross, *Constitution of the United Nations* (Copenhagen: Ejnar Munksgaard, 1950), 130, quoted in Rajan, *United Nations and World Politics*, 217. See also Meray, *Devletler Hukukunda Birleşmiş Milletler Antlaşması*, 50.
[107] Letter of 16 August 1954 from President of the Council of Ministers of Greece to Secretary-General, UN Doc. A/2703 (1954).
[108] *UN Yearbook* (1954), 94-95.
[109] GA Res. 814 (IX), 17 December 1954.
[110] *UN Yearbook* (1955), 77-78.
[111] *UN Yearbook* (1956), 121-122.

jurisdiction of the Court, "disputes with regard to matter which are essentially within the domestic jurisdiction of the United States of America as determined by the United States of America."[112] In its decision, although the Court ruled that it lacked jurisdiction on the case, the decision was based on the grounds that Switzerland had not exhausted local remedies. The Court did not comment on the validity of the reservation.[113] As such, the question of authority determining competence remains far from settled.

2. 1. 3. Exceptions to Article 2(4) and Article 2(7)

The United Nations system, while prohibiting the threat and use of force by states, designates the United Nations as the sole authority able to use force legitimately as a means of maintaining international peace and security. In other words, the Charter places the right of resort to force under the monopoly of the United Nations. With respect to the rule of non-intervention in domestic affairs, the enforcement measures under Chapter VII represent the only exception provided by the Charter. On the other hand, the prohibition of force by states is not absolute. The UN Charter provides for an exception to this rule in relation to measures of collective and individual self-defense.[114]

---

[112] See Herbert W. Briggs, "The United States and the International Court of Justice: A Re-Examination," *American Journal of International Law* 53:2 (1959), 301.

[113] Harris, *Cases and Materials*, 1013.

[114] In addition to these, there are two other exceptions to Article 2(4). One of these is explained in Article 106, which enables the five permanent members of the Security Council to take joint military action if the Member States have not yet made special agreements with the Security Council to provide military contingents to take part in an enforcement action. On the other hand, Articles 107 and 53 contain another exception. They allow for the use of force against the 'enemy' states of the Second World War. The changed circumstances however, since then, have rendered the above exceptions practically void. Hence, for the purposes of the study, force used in self-defense and force authorized by the Security Council are presumed to be the two exceptions pertinent under current international standards. For an elaboration of other exceptions, see for example, Brownlie, *International Law*, 336-

2. 1. 3. 1. Enforcement Measures

The maintenance of peace and security, as indicated in Article 1(1) of the UN Charter, is the essential aim of the United Nations. In this respect, the primary jurisdiction is assigned to the Security Council (Article 24). Accordingly, Chapter VII focuses on the preservation and restoration of peace. It constitutes the core of the collective security machinery of the United Nations. The Security Council is empowered to make decisions binding on UN member states, concerning economic and military measures for maintaining or restoring international peace and security.[115]

2. 1. 3. 1. 1. Security Council

Under Chapter VII, the Security Council is first required to determine whether a "threat to peace, breach of the peace, or act of aggression" exists before it can take measures pursuant to Chapter VII. Article 39 reads:

> "The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decided what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security."

Chapter VII does not, however, furnish explicit definitions as to what constitutes a threat to peace, a breach of the peace, or an act of aggression. It leaves this

---

337; Anthony Clark Arend and Robert J. Beck, *International Law and the Use of Force, Beyond the UN Charter Paradigm* (London. Routledge, 1993), 32-33; Simma (ed.), *The Charter of the United Nations,* 119; Pazarcı, *Uluslararası Hukuk Dersleri*, 121.

[115] Chapter VII also includes non-enforcement measures by the Security Council such as recommendations. See Article 39 of the UN Charter.

completely to the judgment of the Security Council. Thus, as one scholar notes, "a threat to the peace is whatever the Security Council says is a threat to the peace."[116]

Nor does Article 39 qualify that the threat to, or the breach of 'international' peace. In spite of the stated aim of maintaining or restoring 'international' peace, it refers to 'any' threat to peace. Hence, according to the wording of the article, the Security Council's definition of a threat to peace does not need to derive from instances that are specified in Article 2(4). To put it in other words, a threat to peace does not necessarily have to be a conflict between two states.[117] Moreover, read in conjunction with Article 2(7), the Organization is authorized to intervene in matters of domestic jurisdiction in cases where there is judged to be a threat to, or breach of, the peace as determined by the Security Council in accordance with Article 39. Therefore, a threat to peace, a breach of peace, or an act of aggression may well be extended to include domestic affairs, such as civil war, violations of human rights, or the existence of a repressive regime. In this context, Article 39 leaves it to the exclusive discretion of the Security Council to decide what factors constitute a threat to, or breach of international peace and against whom the enforcement action for the maintenance or restoration of the international peace is to be carried out. In practice, on many occasions, the Security Council has found a number of such situations as constituting a threat to or breach of peace. Thus, 'essentially' domestic nature of the situation does not impede the Council from assuming jurisdiction, once it determines that a threat to international peace and security in fact exists. In this sense, Article 39, combined with Articles 41 and 42, implies the "forcible interference in the sphere of

[116] Akehurst, *A Modern Introduction to International Law*, 181.
[117] Kelsen, *The Law of the United Nations*, 731.

a state."[118] As a result, it can be said that the notions "threat to peace, breach of the peace" permit a highly subjective interpretation, compared to, for example, the "threat or use of force" under Article 2(4), which is a more "objectively determinable conduct."[119]

The Security Council's determination of the existence of a threat to, or breach of the peace, or an act of aggression, is a precondition for undertaking further measures under Chapter VII. In this respect, Article 41 contains provisions for non-military sanctions against a wrongdoing state. If the sanctions undertaken in accordance with Article 41 fail, or are judged to be insufficient, the Council may proceed to take measures involving air, sea or land forces in accordance with Article 42. In this respect, the decision of the Security Council is binding over the member states (Article 25).[120] In practice, the absence of agreements for providing the Organization with the "armed forces, assistance and facilities" between the Organization and member states upon Security Council's call for the military measures (Article 43), and the non-functioning of a Military Staff Committee (Article 47) have led to the evolution and innovation in the implementation of enforcement measures. One such innovation is the Security Council's extension of its jurisdiction over the years, to authorize the use of force by states in some instances, or to recommend this type of action in others.

---

[118] Kelsen, *The Law of the United Nations*, 735.
[119] *Ibid.*, 737.
[120] It should be noted that, as the ICJ indicated in the *Certain Expenses* advisory opinion (1962), measures under Article 42 represent "enforcement measures" against a state. Thus, they are distinguished from the deployment of peace-keeping forces, where there is a prior agreement with the state that they are stationed, by the fact that enforcement actions are carried out against the will of the state. For *Certain Expenses* case, see Harris, *Cases and Materials*, 975-984.

2. 1. 3. 1. 2. Role of the Regional Organizations

One potential source of authorizations for interventions is regional organizations. Chapter VIII of the Charter designates a possible role in the maintenance of international peace and security to "regional arrangements or agencies," on the condition that such actions are consistent with the UN's purposes and principles (Article 52). Article 52(2) imposes on the members of the UN that are party to such arrangements to seek "pacific settlement of local disputes" within the framework of such arrangements "before referring them to the Security Council." Hence, peace-keeping operations through regional organizations are not proscribed, since forces under peace-keeping are not within the scope of Article 2(4).[121] Examples of this include the 1961 Arab League Force deployed in Kuwait, the 1965 Inter-American Peace Force deployed in the Dominican Republic and established by the Organization of American States, the 1976 Inter-Arab Deterrence Force in Lebanon sponsored by the Arab League, the 1981-1982 Organization of African Union Force in Chad, and 1995 IFOR (from 1996 on, SFOR) in Bosnia-Herzegovina established by NATO.

In terms of enforcement actions, Article 53(1) empowers the Security Council to "utilize such regional arrangements or agencies for enforcement action under its authority." The next clause of the article makes it clear that regional organizations do not have an independent authority regarding enforcement actions. It declares that "no enforcement action shall be taken under regional arrangements or by regional

agencies without the authorizations of the Security Council." Article 54 requires that the Security Council "be kept fully informed of activities undertaken or in contemplation under regional arrangements" with respect to "the maintenance of peace and security." Thus, the Charter expresses in clear language that regional organizations are only allowed to take up action towards peacekeeping. It stipulates that such organizations are prohibited from exercising Chapter VII powers, unless they have obtained prior Security Council authorization.

2. 1. 3. 1. 3. Role of the General Assembly Regarding International Peace and Security

The UN Charter has assigned a secondary role to the General Assembly in matters of peace and security. Article 11 provides that the General Assembly may consider and make recommendations regarding matters related to the maintenance of international peace and security. However, under Article 12, it is constrained from making such recommendations "while the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter ... unless the Security Council so requests."

Despite these limitations, the 1950 *Uniting for Peace* Resolution expressly authorizes the Assembly to make recommendations on enforcement measures, including military action, when the Security Council is unable to act.[122] Thus, the General

---

[121] Funda Keskin, *Uluslararası Hukukta Kuvvet Kullanma: Savaş, Karışma ve Birleşmiş Milletler (The Use of Force in International Law: War, Intervention and the United Nations)* (Ankara: Mülkiyeliler Birliği Vakfı Yayınları, 1998), 156.

[122] GA Res. 377 (V), 3 November 1950, adopted at the 302nd plenary meeting, by 52 votes to 5, with 2 abstentions.

Assembly is a potential source of authorization when the Security Council fails to act decisively. The *Uniting for Peace* resolution also provides the mechanism of being able to call an "Emergency Special Session" within 24 hours. It empowers the General Assembly to assume these powers only after an occurrence of the breach of peace or an act of aggression, but leaves the condition of threat to peace out of its scope. The resolution is significant in that it substantially broadens the Assembly's area of jurisdiction, and gives the General Assembly the right to decide whether a breach of peace or an act of aggression has taken place -a right exclusively reserved for the Security Council by the Charter.[123] In this sense, some have argued that the Resolution has fundamentally rearranged the collective security mechanism of the United Nations.[124] Nevertheless, the fact that in practice, General Assembly has effectively employed the rights conferred by the Resolution only once in the Korean case (1951), suggests the lessening relevance of the resolution, in spite of its technical existence.[125] The practice of the General Assembly with respect to matters of peace and security, thus, has been confined to examination, discussion, and occasionally, condemnation. Nonetheless, it is important to note that an intervention having the necessary two thirds backing or more of the General Assembly, usually has a strong moral and political legitimacy, even in the absence of Security Council endorsement.

---

[123] Çelik, *Milletlerarası Hukuk*, 420.

[124] Keskin, *Uluslararası Hukukta Kuvvet Kullanma*, 147-148.

[125] The General Assembly has acted under *Uniting for Peace* resolution on several occasions, including the Suez question (1956), the Hungarian question (1956), Lebanon and Jordan (1958), the Congo question (1960), the Middle East (1967), the Pakistan Civil War (1972), Afghanistan (1980), the Palestine situation (1980, 1982), Namibia (1981) and the Question of Occupied Arab Territories (1982). In almost all of these cases, an emergency special session was held, but no enforcement action was undertaken. The resolution was raised in 1956 as the basis for the formation of a multinational force (UNEF), which operated on Egyptian territory with Egyptian consent after the Suez crisis. However, since UNEF was established with Egypt's consent, the ICJ decided in the *Certain Expenses* case that UNEF was not an enforcement action "within the compass of the Chapter VII of the Charter." For *Certain Expenses* case, see Harris, *Cases and Materials*, 975-984.

2. 1. 3. 2. Self-defense as an Exception to Article 2(4)

As elaborated above, Article 2(4) strictly proscribes states from using force in resolving their differences. Nonetheless, Article 51, which contains the right to individual and collective self-defense, provides for the only exception to the proscription of the unilateral use of force, specifying the conditions under which individual states may resort to force. It states:

> "Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take any time such action as it deems necessary in order to maintain or restore international peace and security."

There is considerable controversy regarding Article 51, as the scope of self-defense and the circumstances under which the right of self-defense may be exercised are ill-defined. This also applies to the nature of what is meant by "armed attack." In this respect, the most contentious issue pertains to whether the use of right of self-defense is confined to the circumstances whereby an armed attack has already occurred or whether this right can be invoked in anticipation of such an attack. On the one hand, there are those who argue that Article 51, read in conjunction with general prohibition of the use of force set out in Article 2(4), limits the invocation of such a right to cases where an actual armed attack has occurred.[126] This view accepts no other circumstances under which the right to self-defense may be invoked. In this

connection, the term "inherent right" is taken to imply the undeniable nature of this right to members and non-members alike, and to indicate that the UN may provide assistance to a non-member in their defense against an armed attack. Thus, it is argued that the term 'inherent' was intended to underline that defense against an armed attack is a right of every sovereign state.[127]

On the other hand, there are legal scholars who argue that Article 51 should not be interpreted as excluding the right to anticipatory self-defense in the case of an imminent danger of attack. This view rejects the restrictive interpretation of the word 'if', as it is employed in Article 51, as meaning "if and only if." To that effect, these scholars point out that by qualifying the right of self-defense as 'inherent,' the article indicates the existence of a right of self-defense in pre-Charter customary international law, according to which preventive measures are permitted. Hence, it is argued that the word 'inherent' shows that the article did not intent to restrict the pre-existing customary right. In this sense, the argument goes, by the term "armed attack," Article 51 refers merely to one situation, whereby a state could invoke the right of self-defense.[128] Supporters of this view refer to the legal criteria for permissible self-defense as formulated in the case of *Steamer Caroline*,[129] as

---

[126] Brownlie, *International Law*, 265; Kelsen, *The Law of the United Nations*, 797-798; Hersch Lauterpacht (ed.), L. Oppenheim, *International Law*, 299; Louis Henkin, *How Nations Behave: Law and Foreign Policy* (New York: Columbia University Press, 1979), 140-143.
[127] Kelsen, *The Law of the United Nations*, 792.
[128] D. W. Bowett, *Self-Defense in International Law* (New York: Frederick A. Praeger, 1958), 185. Also, Higgins, *The Development of International Law*, 201.
[129] For summary of this case, see Hersch Lauterpacht (ed.), L. Oppenheim, *International Law*, 300-301. Also for the historical details, see Walter LaFeber, *The American Age, US Foreign Policy At Home and Abroad, 1750 to the Present*, (New York: W. W. Norton & Company, 1994), 109-110; and Julius W. Pratt, Vincent P. De Santis and Joseph M. Siracusa, *A History of United States Foreign Policy*, (USA: Prentice-Hall, Inc., 1980), 78-80.

reflecting the authoritative customary law.[130] According to the formulation in the aftermath of this case, the anticipatory self-defense is admissible, when "the necessity of that self-defense is instant, overwhelming, and leaving no choice of means and no moment for deliberation."[131]

There has been no authoritative decision in international litigation on the question of anticipatory self-defense. In the *Nicaragua* case, the International Court of Justice left the question open, by stating that:

> "...the issue of the lawfulness of a response to the imminent threat of an armed attack has not been raised. Accordingly the Court expresses no view on that issue"[132]

The Court's position on this issue is unclear, given that Judge Schwebel in his dissenting opinion in the *Nicaragua* case, argued that Article 51 does not circumscribe self-defense to a situation "if, and only if armed attack occurs."[133]

As a result, it can be said that the legal controversy with regards to preventive interventions on the basis of right of anticipatory self-defense is a far from settled one. Despite the fact that a number of states have argued for the permissibility of such preventive measures on several occasions, the view that the UN Charter

---

[130] Jennings refers to this case as the "*locus classicus*" of the customary law of self-defense. R. Y. Jennings, "The Caroline and McLeod Cases," *American Journal of International Law* 32 (1938), 92. For the view that the customary law regarding self-defense is best expressed in the *Caroline* incident, see also Timothy L. H. McCormack, *Self-Defense in International Law, The Israeli Raid on the Iraqi Nuclear Reactor* (New York: St. Martin's Press, 1996), 247; Schachter, *International Law*, 151; Arend and Beck, *International Law and the Use of Force*, 72.

[131] Upon the incident of invasion of American territorial waters, the American Secretary of State, Daniel Webster, set out the elements of self-defense that provided the philosophical basis for the right to use force in self-defense and the limits to the exercise of that right. See note of Webster to British authorities, 27 July 1842, quoted in McCormack, *Self-Defense in International Law*, 183.

[132] *ICJ Reports* (1986), para. 194.

[133] *ICJ Reports* (1986), Dissenting Opinion of Judge Schwebel.

prohibits the use of force for the purpose of ending unlawful interference unless it consists of an armed attack, seems to prevail in the literature.

One other problem related to the exercise of the right of self-defense arises out of the subjective character of the decision to resort to force in self-defense. Because of the nature of the international system, each state is, by this right, entitled to judge on its own whether to resort to force to defend itself.[134] However, a legal question remains whether circumstances merit the legitimate exercise of self-defense.[135] Under Article 51, the exercise of right of self-defense is permissible "until the Security Council has taken the measures necessary to maintain international peace and security." As such, Article 51 recognizes that there may be pressing situations, which requires an immediate defensive response. Thus, the language of the article allows states to temporarily judge the urgency of the situation and decide to act in defense, but at the same time by stipulating "measures taken in the exercise of self-defense shall be immediately reported to the Security Council," it also subjects the state's reasoning to international review.[136] In this respect, international precedent demonstrates that an action of defensive nature is not necessarily considered legitimate based solely on the judgment of the state taking that action. For example, Japan maintained that its action in Manchuria in 1931 was defensive. But the Assembly of the League of Nations concluded that the Japanese action could not be considered as a legitimate exercise of the right of self-defense.[137] In the same vein, the judgment of the International Military Tribunal in Nuremberg in 1946 rejected the German Nazi

[134] Shaw, *International Law*, 694.
[135] J. L. Brierly, *The Law of Nations, An Introduction to the International Law of Peace*, (London: Oxford University Press, 1942), 257; McCormack, *Self-Defense in International Law*, 259.
[136] Higgins, *The Development of International Law*, 205, 207.
[137] Hersch Lauterpacht (ed.), L. Oppenheim, *International Law*, 302-303.

leaders' argument that Germany acted in self-defense and that every state must be the judge of whether a given situation yields to the exercise of the right of self-defense, by asserting that "whether action taken under the claim of self-defense was in fact aggressive or defensive must ultimately be subject to investigation or adjudication if international law is ever to be enforced."[138] As a result, due to the lack of an objective criteria for assessing the alleged imminence of an attack and the consequent potential for abuse, the dominant view among legal scholars -who make reference to the UN's aspiration to restrict the use of force by the individual state inasmuch as it is possible- reads Article 51 as ruling out the use of force for self-defense, other than that in response to an armed attack.[139]

In concluding this part on the related provisions, it can be said that although the UN Charter does not explicitly lay down a principle of non-intervention applying to the relations between states, the principle is implicit in the general prohibition of the use of force in international relations. By allowing for only one condition as an exception to the prohibition of the use of force, the Charter has considerably confined the scope of what are considered legitimate self-help measures. Nevertheless, while the UN Charter is restrictive with respect to the use of force by states, it is fairly open-ended when it comes to the use of force and intervention by the UN itself. By assigning broad powers, particularly to the Security Council, in matters of international peace and security, it leaves a great deal of room for political considerations and deliberations.

---

[138] Judgment of the Military Tribunal at Nuremberg, 1946, *Trial of German Major War Criminals Before the International Military Tribunal*, quoted in Schachter, *International Law*, 137.
[139] Simma (ed.), *The Charter of the United Nations*, 666-667; Brownlie, *International Law*, 227-275; Akehurst, *A Modern Introduction to International Law*, 222-223; Louis Henkin, *How Nations Behave*, 141-145.

2. 2. NON-INTERVENTION IN THE GENERAL ASSEMBLY RESOLUTIONS

There are a number of UN General Assembly Resolutions that enshrine non-intervention norm in interstate relations. One prominent scholar asserts that it was through these resolutions that "the implicit noninterventionism of the Charter began to be made explicit in the practice of the United Nations."[140]

From the very inception of the United Nations, the General Assembly has repetitively underlined the non-intervention principle as the principle duty of states. For example, Article 3 of the *Draft Declaration on the Rights and Duties of States* of 6 December 1949, stated that:

> "Every state has the duty to refrain from intervention in the internal and external affairs of the any other state."[141]

The duty of non-intervention in internal affairs was strongly emphasized in subsequent resolutions. In *Peace Through Deeds* Resolution for example, the General Assembly condemns "the intervention of a State in the internal affairs of another state for the purpose of changing its legally established government by the threat or use of force."[142] The 1957 Resolution of *Peaceful and Neighbourly Relations among States* reiterates the duty of non-intervention as one of the main principles the Charter was based on.[143]

---

[140] Vincent, *Nonintervention*, 237.
[141] GA Res. 375 (IV), *Draft Declaration on the Rights and Duties of States*, 6 December 1949.
[142] GA Res. 380 (V), 17 November 1950.
[143] GA Res. 1236 (XII), *Peaceful and Neighbourly Relations among States*, 14 December 1957.

Notwithstanding the subsequent emphasis on the rule of non-intervention, Resolution 2131, the *Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty* adopted in 1965, provides the first detailed formulation of the principle:

> "No State has the right to intervene, directly or indirectly, for any reason whatever, in the internal and external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements are condemned."[144]

The following paragraphs further condemn the use of "economic, political or any other type of measures to coerce another State," subversion, and all other forms of indirect intervention. Specifically, the second operative paragraph declares that:

> "No State shall organize, assist, foment, finance, incite, or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State, or interfere in civil strife in another State."

The Declaration further acknowledges that full observance of the principle of non-intervention was "essential to the fulfillment of the purposes and principles of the United Nations." On the other hand, the preamble underlines the importance of the principle and provides the doctrinal foundation with references to the principle as it is asserted in the charters of the Organization of American States, the League of Arab States, and the Organization of African Unity. Ostensibly, this declaration depicts a comprehensive doctrine of non-intervention and goes beyond obligations outlined in the Charter by insisting on other principles like self-determination, human rights, elimination of racial discrimination and colonialism.[145]

---

[144] GA Res. 2131 (XX), 21 December 1965.
[145] Vincent, *Nonintervention*, 237.

The question of definition of the duty of non-intervention was once again taken up in the drafting of the Resolution 2625, which aimed to outline the fundamental principles of international law. The subsequent *Declaration of Principles of International Law* of 1970 adopts essentially the same definition of non-intervention as that provided in Resolution 2131. It links "the obligation not to intervene in the affairs of any other State" with the international peace and security. Restating the principle concerning "the duty not to intervene in matters within the domestic jurisdiction of any State," it additionally proclaims that acts of "armed intervention and all other forms of interference" constitute violation of international law.[146] The following Resolution 2734 on the *Strengthening of International Security* once again call upon all States "not to intervene in matters within the domestic jurisdiction of any State."[147]

The principle of non-intervention was further developed in a more detailed way in the 1981 *Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of the States*. Regarding the "full observance of the principle of non-intervention and non-interference in the internal and external affairs of States" as having the utmost significance for the "maintenance of international peace and security," and violation of it as a "threat to the freedom of peoples, the sovereignty, political independence and territorial integrity of States" as well as to "their political, economic, social and cultural development," the Resolution embarks on a detailed elaboration of the scope of the principle of non-intervention and non-interference in

[146] GA Res. 2625 (XXV), 24 October 1970.
[147] GA Res. 2734 (XXV), *Declaration on the Strengthening of International Security*, 16 December 1970.

the internal and external affairs of States, and prescribes a series of specific duties. According to it, states are:

> "...to refrain in their international relations from the threat or use of force in any form whatsoever...to disrupt the political, social or economic order of another State, to overthrow or change the political system of another State or its Government..., to refrain from armed intervention, subversion, military occupation or any other form of intervention and interference, overt or covert, directed at another State or group of States, or any act of military, political or economic interference in the internal affairs of another State."[148]

In addition, the Resolution articulates other duties, which extends beyond the traditional boundaries of the non-intervention principle. For example, it asserts:

> "The duty of States to refrain from any measure which would lead to the strengthening of existing military blocs or the creation or strengthening of new military alliances, interlocking arrangements, the deployment of interventionist forces or military bases and other military installations conceived in the context of great-Power confrontation."

and,

> "...the duty of a State not to use its external economic assistance programme or adopt any multilateral or unilateral economic reprisal or blockade and to prevent the use of transnational and multilateral corporations under its jurisdiction and control as instruments of political pressure or coercion against another State, in violation of the Charter of the United Nations." [149]

As such, the practice of interference in the internal affairs is condemned in a number of General Assembly resolutions.[150] Although General Assembly resolutions are not binding over states, there is a general agreement on the authoritative character of the

---

[148] GA Res. 36/103, *Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of the States*, 9 December 1981.

[149] It should be noted that this Resolution was opposed by most developed states, namely Australia, Canada, France, Germany, the Netherlands, the United Kingdom and the United States.

[150] Among other resolutions that emphasized the principle of non-intervention are GA Res. 34/103, *Inadmissibility of the Policy of Hegemonism in International Relations*, 14 December 1979 and GA

resolutions on notions like intervention, self-determination and human rights. In this respect, they are argued to represent concrete interpretations of the Charter and assertions of general international law.[151] For example, Oscar Schachter points out that:

> "Legal uncertainty has, however, been created when the Assembly adopted resolutions which purported to assert legal norms without recourse to the treaty process. Such resolutions "declared the law" either in general terms or as applied to a particular case. Neither in form nor in intent were they recommendatory."[152]

Judgments of International Court of Justice also support this view. For example, in the *Nicaragua* case, the Court referred to Resolution 2131 and Resolution 2625 as reflecting customary law.[153] Thus, evaluating the resolutions as mere recommendations would to underestimate of the authoritative character of declaratory resolutions and to disregard their significance in the development of norms. Moreover, the repetition or re-citation of a principle in successive resolutions demonstrates continuity, which may be said in turn to represent a consensus or tendency as well as a general degree of support of states concerning this matter. In this context, it can be pointed out that the main principles in General Assembly declarations have been invoked and referred to in several Security Council resolutions concerning specific instances of intervention. Thus, it can be said that the Assembly has been influential in making non-intervention a political principle, through the subsequent detailed elaboration of its content and importance. Furthermore, by listing the rule of non-intervention among the principles of

---

Res. 37/10, *Manila Declaration on the Peaceful Settlement of International Disputes*, 15 November 1982.

[151] Blaine Sloan, *United Nations General Assembly Resolutions In Our Changing World* (New York: Transnational Publishers, Inc., 1991), 45.

[152] Schachter, *International Law*, 85.

[153] *ICJ Reports* (1986), para. 203.

international law in Resolution 2625, the General Assembly has put its imprint on the rule of non-intervention as a legal principle as well. As a result, the above-mentioned resolutions are not only significant for customary international law, but also mirror the clear inclination of the society of states to consider interference as unlawful.

Having established the place of the principle of non-intervention in the UN by looking at the legal framework provided in the Charter and the political significance attached to it in various General Assembly resolutions, it is now necessary to turn the attention to the discussion of actual cases of military intervention, with a special emphasis on the justifications raised for such interventions, and the application of principle of non-intervention by the United Nations in UN reactions with respect to their legitimacy.

PART II

EXCEPTIONS TO THE RULE OF NON-INTERVENTION AS THE MAIN JUSTIFICATIONS FOR MILITARY INTERVENTION

In breaching the rule of non-intervention in internal affairs, states have often defended their conduct by evoking exceptions or justifications contained within the rule itself. Consequently, the two most common justifications of military interventions found in state practice are the right of self-defense and the consent of the target state. Together they constitute the most important legal grounds for foreign armed intervention, since self-defense, as embodied in Article 51, is the main exception to the general prohibition of the use of force in international relations, and 'consent' in international law is a circumstance which precludes wrongfulness of unlawful acts.

Almost in all cases of military interventions studied in the present research, states have claimed a defensive character. The problem however, arises from the fact that

the intervening states have attempted to justify their acts on the basis of Article 51 of the Charter in cases where it is highly controversial, indeed impossible, to justify them as acts of self-defense per se. The question is to what extent the UN organs (Security Council and General Assembly) condone such arguments based on Article 51 and accept those acts as self-defense. Similarly, 'consent' of the state where the intervention takes place has often been claimed by the intervening states. Usually coupled with other justifications, such consent typically finds expression in an *ad hoc* invitation or in a prior agreement between the two states. The main point of contention regarding 'consent' as a justification for military intervention appears to be the legitimacy of the entity permitting the intervention as well as the applicability of the treaty in concern.

As such, this part focuses on the primary justifications of military intervention in the internal affairs. By exploring the United Nations' responses to specific situations in which the principle of self-defense and consent of the target state for armed interventions have been invoked, this part aims to determine whether the UN reactions reveal permissibility of military intervention defended on the basis of those principles in question and whether there existed some kind of coherent pattern in the United Nations' application of the principle of self-defense and of the element of 'consent' to the military interventions during the Cold War, in view of the opinions expressed and the decisions taken in the course of the consideration of the cases.

CHAPTER I:

INDIVIDUAL AND COLLECTIVE SELF DEFENSE

It is generally agreed that self-defense is a special form of self-help.[1] In particular, it is a kind of self-help "against a specific violation of the law, against the illegal use of force, not against other violations of the law."[2] In this sense, self-defense can be defined as "forcible self-help in reply to a forceful wrong."[3] There exists a general agreement in the legal scholarship on the permissibility of the use of force in self-defense. As a result, the appeal to self-defense constitutes the most frequently heard justification for armed intervention.

It has been noted that within the framework of the UN Charter, the right of self-defense is stipulated in Article 51, and that it constitutes the main exception to the general ban on the use of force embodied in Article 2(4) of the Charter. Given that one qualification for the prohibition of the use of force in Article 2(4) is "international relations," the application of self-defense for military intervention in

---

[1] For elaboration of the distinction between self-help and self-defense, see Derek W. Bowett, *Self-Defense in International Law* (New York: Frederick A. Praeger, Inc., Publishers, 1958), 11.

[2] Kelsen, *Principles of International Law*, 60. For a similar view, see also, Ann Van Wyen Thomas and A. J. Thomas, Jr., *Non-intervention, The Law and Its Import in the Americas* (Dallas: Southern Methodist University Press, 1956), 79.

[3] Rosalyn Higgins, *The Development of International Law Through The Political Organs of the United Nations* (London: Oxford University Press, 1963), 199.

the internal affairs becomes relevant only when the internal situation within a state obtains an international aspect.[4] The 'internationalization' of an internal situation on the other hand, can be said to occur when an internal disturbance within a state crosses to a bordering state, when a state intervenes on the side of one of the fighting groups within a state, or when there is a combination of these two situations.[5] For the purposes of this study, it is these set of circumstances that raise problems relating to the application of the concept with regards to its exact content and scope.

The following analysis includes cases of military interventions justified as individual self-defense in situations where an internal matter of a state is claimed to constitute an external threat to the security of another state, and as collective self-defense including the so-called right of counter-intervention, in situations where the intervened state is claimed to be in need of assistance against an alleged threat or aggression.

1. 1. INDIVIDUAL SELF-DEFENSE

As noted before, the main point of contention regarding the exercise of self-defense within the terms of Article 51 pertains to the condition of "armed attack." Where there is an actual armed attack, there is little controversy on the right of states to self-

[4] Accordingly, it should be recalled that the prohibition does not extend to the use of force within the domestic jurisdiction, or "within the state's metropolitan area, in its colonies and protectorates." In this respect, Bowett points out that this qualification complements "the general limitation on the scope of the authority of the organization contained in Article 2(7), which preserves to the members matters 'essentially within the domestic jurisdiction.'" Bowett, *Self-Defense in International Law*, 149.
[5] Antonio Tanca, *Foreign Armed Intervention in Internal Conflict* (The Netherlands: Martinus Nijhoff Publishers, 1993), 52.

defense. However, practice illustrates that the circumstances under which states have raised the claim of individual self-defense do not necessarily involve an armed attack as such. The instances where the right of individual self-defense were appealed, involve responses to the alleged external threat posed to the intervening state by the internal situation within the target state as well as responses to prior aggression. Such cases comprise the Indian intervention in East Pakistan in 1971 (which later became Bangladesh), the Vietnamese intervention in Kampuchea in 1978, the Tanzanian intervention in Uganda in 1978 and the Israeli intervention in Lebanon in 1982.

When India launched a full-scale attack against Pakistan on 3 December 1971,[6] the Indian justification was based on two arguments, one of which is self-defense against an earlier Pakistani attack and against the threat posed to Indian economy and security by the massive inflow of refugees[7] caused by the repressive Pakistani policies in East Pakistan.[8] During the first round of the Security Council debates between 4 and 6 December 1971, the Indian representative portrayed the inflow of refugees as aggression, which had inflicted intolerable social, financial and administrative pressures on India.[9] Given that the inflow of refugees, although might be considered as an immediate outcome of the policies of the Pakistani government,

---

[6] For the background of the conflict between Pakistan and India and the events leading to Indian attack to Pakistan, see Nicholas J. Wheeler, *Saving Strangers, Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000), 55-59. See also, "Clashes on East Pakistan Border, September-November," *Keesing's Record of World Events* 17 (December 1971), http://www.keesings.com.

[7] For detailed information regarding the refugee flow, see "The Refugee Situation," *Keesing's* 17 (December 1971).

[8] The other Indian justification was assistance to the people of Bangladesh in their struggle for self-determination. This Indian justification will be taken up in the Chapter I of Part III within the context of the question of whether self-determination can justify armed intervention. For Indian justifications, see statements by the Permanent Representative of India at the UN General Assembly, UN Doc. A/PV.2003 (1971) and by the Indian Foreign Minister at the Security Council, UN Doc. S/PV.1611 (1971).

[9] *UN Yearbook* (1971), 147.

was not a deliberate strategy to threaten the territorial integrity or political independence of India, and thus does not fall within the terms of Article 2(4), the question in this case is related to whether the inflow of refugees would render an armed intervention in self-defense admissible. Insofar as the inflow of refugees does not constitute an "armed attack" or an immediate and overwhelming threat, the exercise of self-defense does not seem to be permissible not only under the provisions of Article 51 of the Charter, but also in its more 'traditional' sense.[10] Nevertheless, the UN reaction was rather mixed. Despite some countries' open condemnation, in particular China,[11] the debates focused on the immediate threat posed by the situation to international peace and security, and on the repeated calls for cessation of hostilities and withdrawal, rather than deploring the Indian intervention on the grounds of inadmissibility of its justifications. Additionally, a number of states also noted the inadmissibility of Pakistani policies in East Pakistan.[12] Several draft resolutions were proposed.[13] However, failing to agree on a particular position, the Security Council referred the matter to the General

[10] For the 'traditional' requirements of self-defense in customary international law, see Chapter II of Part I.

[11] *UN Yearbook* (1971), 147. In fact, among all the draft resolutions, it was only the one introduced by China that openly condemned the Indian aggression against Pakistan. See draft resolution by China, UN Doc. S/10421(1971). It should be noted that the initial US reaction was considerably critical of the Indian action, accusing India "of major responsibility" for the war. However, as a result of Congressional criticism, the US administration softened its negative reaction and subsequently avoided the use of the word 'aggression' to describe India's actions. For the details of the congressional criticism and the administration's response, see "US Support for Pakistan - Suspension of Military and Economic Aid to India," *Keesing's* 18 (February 1972).

[12] See *UN Yearbook* (1971), 146-150.

[13] See draft resolution by the United States, UN Doc. S/10416 (1971); draft resolution by Belgium, Italy, Japan, UN Doc. S/10417 (1971); draft resolution by the USSR, UN Doc. S/10418 (1971); draft resolution by Argentina, Burundi, Nicaragua, Sierra Leone, Somalia, UN Doc. S/10419 (1971); draft resolution by China, UN Doc. S/10421 (1971); draft resolution by Argentina, Belgium, Burundi, Italy, Japan, Nicaragua, Sierra Leone, Somalia, UN Doc. S/10423 (1971); draft resolution by Belgium, Italy, Japan, Nicaragua, Sierra Leone, S/10425 (1971); draft resolution by the USSR, UN Doc. S/10428 (1971); draft resolution by Argentina, Burundi, Japan, Nicaragua, Sierra Leone, Somalia (adopted as SC Res. 303), UN Doc. S/10429 (1971).

Assembly.[14] The General Assembly debates paralleled the Council discussion, with China and Pakistan condemning the intervention, and others mainly demanding the end of the hostilities as well as a political settlement in East Pakistan.[15] The subsequent Assembly resolution characterized the hostilities between India and Pakistan as constituting "an immediate threat to international peace and security," and recalling Article 2(4), called for an immediate cease-fire and withdrawal of all troops.[16] Finally, during the second series of meetings on the situation in the subcontinent between 12 and 21 December 1971, the Security Council was able to adopt a compromise resolution along the same lines with the Assembly resolution, which stated that the situation remained to be a threat to international peace and security and demanded a cease-fire as well as withdrawal of all armed forces to their respective territories.[17] Thus, neither the Council nor the Assembly condemned the Indian intervention, and Bangladesh was recognized by many states by the end of February 1972.[18]

In December 1978, an estimated 100,000 Vietnamese troops entered Kampuchea, joined by some 20,000 United Front troops --a resistance organization, which was founded in the "liberated area of Kampuchea." After two weeks of fighting, the capital Phnom Penh fell, and a provisional government was created by the Front with

---

[14] SC Res. 303, 6 December 1971, adopted by 11 votes to 0, with 4 abstentions (France, Poland, USSR, United Kingdom).

[15] *UN Yearbook* (1971), 150-152. Some countries, whilst not openly supporting the Indian intervention, held that any solution must take into consideration the will of the Eastern-Pakistani people. See for example, Argentinean and Turkish statements at the General Assembly, UN Doc. A/PV.2002 (1971), 22, 36-37.

[16] GA Res. 2793 (XXVI), 7 December 1971.

[17] SC Res. 307, 21 December 1971, adopted by 13 votes to 0, with 2 abstentions (USSR and Poland).

[18] Among the states which recognized Bangladesh by then were mostly communist countries but also Western Germany, France, the UK, Austria, Denmark, Norway, Sweden, Finland, Belgium, Italy, Japan, Ireland, the Netherlands and Luxembourg. See "Recognition of Bangladesh by Soviet Union,

the assistance of Vietnam.[19] The Vietnamese foreign minister stated that Kampuchean people's struggle to oust the Pol Pot regime was an internal matter.[20] Similarly, during the Security Council's consideration of the matter, the Vietnamese representative asserted that the revolutionary war of Kampuchean people should be distinguished from the Kampuchean-Vietnamese border war. Vietnamese action, he affirmed, was a reaction to the persisting aggression of Pol Pot's regime against Vietnam, which had the right to defend its independence, sovereignty and territorial integrity.[21] The Soviet Union and its allies openly welcomed the overthrow of the Pol Pot regime, and expressed the view that Vietnam was victim of aggressive Pol Pot regime.[22] They also objected to the Security Council's consideration of the issue, arguing that the situation in Kampuchea was an internal matter.[23] All other countries,[24] including some communist countries,[25] condemned the Vietnamese intervention, and stressed the need to observe the Charter's principle of non-interference in the internal affairs of states, respect for their independence, sovereignty and territorial integrity, and the settlement of disputes by peaceful means; and called for a cease-fire and the withdrawal of all foreign forces from Kampuchea. A number of states, among which were France, the United Kingdom,

---

Britain and Other States. - Withdrawal of Pakistan From the Commonwealth," *Keesing's* 18 (February 1972).

[19] For the course of events, see "Vietnamese Invasion of Cambodia – Uprising led by United Front – Fall of Phnom-Penh," *Keesing's* 25 (May 1979).

[20] Letter of 8 January to the Security Council from Vietnam (transmitting statement of 6 January 1979 by Ministry of Foreign Affairs), UN Doc. S/13011 (1979).

[21] UN Doc. S/PV.2108 (1979), 11-14; *UN Yearbook* (1979), 274.

[22] The countries not criticizing the intervention included Angola, Bulgaria, Cuba, Czechoslovakia, German Democratic Republic, Hungary, India, Laos PDR, Mongolia, Poland, Vietnam, USSR, Zambia. For the statements of the respective countries see, UN Documents S/PV.2108-2112 (1979); S/PV.2114-2118 (1979); S/PV.2129 (1979). For the supportive statements appeared in the press of these countries, see "Reactions in Communist Countries," *Keesing's* 25 (May 1979).

[23] UN Doc. S/PV.2108 (1979), 1-3; *UN Yearbook* (1979), 273.

[24] For reactions of the members of ASEAN, see "Reactions in ASEAN Countries," *Keesing's* 25 (May 1979).

Norway and Portugal, argued that the violations of human rights by the Pol Pot government could not justify intervention by another state.[26] The United States, on the other hand, asserted that Vietnam's dispute with Kampuchea could not give Vietnam a right to take over that country.[27] A draft resolution, which would call upon all foreign forces to withdraw from Kampuchea, and would demand strict adherence to the principle of non-interference in the internal affairs of states, failed due to the veto of the Soviet Union.[28] Another draft resolution to the same effect sponsored by the five countries of ASEAN (Association of South East Asian Nations) also failed to be adopted for the same reason.[29] Notwithstanding the Council's failure to take a position, the General Assembly adopted a resolution, by which the Assembly deeply regretted the armed intervention by outside forces in the internal affairs of Kampuchea, called for the immediate withdrawal of all foreign forces from Kampuchea, and called on all states to refrain from all acts or threats of aggression and all forms of interference in the internal affairs of states in South-East Asia. The resolution further appealed to all states to refrain from any interference in the internal affairs of Kampuchea in order to enable its people to decide their own future and destiny, and to respect the sovereignty, territorial integrity and independence of Kampuchea.[30] In the following considerations of the situation in Kampuchea, the

---

[25] Among the communist countries that condemned the Vietnamese intervention were China, Romania, Yugoslavia and North Korea. For reactions of these countries, see "Reactions in Communist Countries," *Keesing's* 25 (May 1979).

[26] For the views of all countries that participated in the Council discussion on the matter, see UN Documents S/PV.2108-2112 (1979); S/PV.2114-2118 (1979); S/PV.2129 (1979); *UN Yearbook* (1979), 274.

[27] UN Doc. S/PV.2114 (1979), 3; *UN Yearbook* (1979), 281.

[28] Draft resolution introduced by Bangladesh, Bolivia, Gabon, Jamaica, Kuwait, Nigeria and Zambia. The vote was 13 in favor and 2 against (Czechoslovakia and the USSR). For the text of the proposed resolution, see UN Doc. S/13027 (1979).

[29] Draft resolution sponsored by Indonesia, Malaysia, the Philippines, Singapore, Thailand. The vote was 13 in favor and 2 against (Czechoslovakia and the USSR). For the text of the proposed resolution, see UN Doc. S/13162 (1979).

[30] GA Res. 34/22, 14 November 1979. Adopted by 91 to 21, with 29 abstentions.

Assembly stressed the need for all states to the principles of respect for the independence, sovereignty and territorial integrity of all states, non-intervention and non-interference in the internal affairs of states, non-recourse to the threat or use of force, and peaceful settlement of disputes, and deplored the continuation of the armed intervention.[31] Judging from the debates and draft resolutions that were put to vote in the Council as well as the Assembly resolutions, it can be maintained that majority of the member states of the United Nations did not perceive the Vietnamese intervention in Kampuchea as an act of self-defense, despite the general recognition in the draft resolutions and the decisions of the Assembly of the conflict between Vietnam and Kampuchea.

In stark contrast to Vietnam's intervention in Kampuchea, Tanzania's intervention in Uganda in the same year,[32] justified with similar terms, was met with general indifference. Like in the case of Vietnamese intervention, Tanzanian intervention also led to the overthrow of the existing Idi Amin regime and a change of government in Uganda. However, unlike Vietnam, Tanzania did not explicitly invoke the right of self-defense, although President Nyerere of Tanzania presented the Tanzanian military action as a defensive one in response to Uganda's earlier invasion of the Tanzanian territory and occupation of Kagera Salient.[33] With respect to the struggle of Ugandan exile forces struggling to overthrow Amin, paralleling the two-wars argument of Vietnam –the need to make distinction between revolutionary war

[31] See GA Resolutions 35/6, 22 October 1980; 36/5, 21 October 1981; 37/6, 28 October 1982; 38/3, 27 October 1983; 39/5, 30 October 1984; 40/7, 5 November 1985; 41/6 21 October 1986; 42/3, 14 October 1987; 43/19, 3 November 1988, 44/22, 16 November 1989.

[32] For the background of the Tanzanian-Ugandan conflict, see Wheeler, *Saving Strangers,* 112-116. For the events leading to Tanzanian intervention see, "October 1978 Invasion of Tanzanian Territory by Uganda –International Reactions" and "Tanzanian Military Action Against Uganda," *Keesing's* 25 (June 1979).

of Kampuchean people and the border war between Vietnam and Kampuchea-, Nyerere also stated that while overthrowing Amin was the responsibility of the Ugandans, it was Tanzania's task to chase him from Tanzanian soil. He also maintained that the Ugandans decision to fight with Amin's regime coincided with the Tanzanian decision to punish Amin.[34] Secondly, Nyerere also argued that their action had set a good precedent to the effect that "when African nations find themselves collectively incapable of punishing a single country, then each country has to look after itself."[35] Thus, the intervention was somewhat ambiguously defended as punishment of Amin after the Organization of African Unity (OAU) failed to do so. Finally, when the Tanzanian involvement reached to 20,000 troops while there were 3,000 to 5,000 Ugandan exiles, the two-wars argument became harder to sustain, thus, consequently Tanzania also defended its action as support to the exile forces.[36] The Tanzanian intervention never came before the Security Council, nor was it debated by the General Assembly. Although by a letter of 28 March 1979, Uganda requested an urgent meeting in connection with the Tanzanian aggression against Uganda, it withdrew its request upon the appeal of a group of African states at the UN not to involve the Security Council to the conflict.[37] The new government of Uganda was soon recognized both by the regional countries and many other states.[38] With regards to the reactions of the African countries, the OAU did not issue a statement on the change of the government in Uganda, although Tanzanian action was a clear violation of OAU's principle of non-intervention.

---

[33] "Continued Mediation Efforts," *Keesing's* 25 (June 1979).
[34] *Ibid.*; "Recognition of Lule Government by Other Countries," *Keesing's* 25 (June 1979).
[35] "Recognition of Lule Government by Other Countries," *Keesing's* 25 (June 1979).
[36] Wheeler, *Saving Strangers,* 121-122.
[37] Letters of 28 March and 5 April from Uganda (request to convene Council and withdrawal of request respectively), UN Documents S/13204 (1979) and S/13228 (1979).
[38] "Recognition of Lule Government by Other Countries," *Keesing's* 25 (June 1979).

Among the few regional countries that criticized Tanzanian action as an illegal intervention were Sudan, Nigeria and Morocco. For example, the Government of Nigeria issued a warning on 9 April 1979 that interfering in another country's affairs to the extent of invasion -as Tanzania had done in Uganda- might lead to a chain reaction in Africa in which "a few militarily powerful countries would be able to determine the leadership of other states." On the other hand, in Morocco, the pro-government daily *El Maghrib* on 12 April 1979 deplored "the silence of the OAU" and indicated that for the first time in the history of Africa a country had "invaded its neighbor and taken its capital with impunity."[39] Finally, during the OAU meeting in Monrovia between 17 and 21 July, 1979, Sudan described Tanzanian action as "a sad precedent in Africa" and a clear violation of OAU's Charter, which "prohibits interference in other people's internal affairs and invasion of their territory by armed force."[40] Nonetheless, the general lack of interest in the Tanzanian intervention may be contrasted with the Vietnamese one, which was justified on similar grounds and resulted in a similar outcome, i.e. the overthrow of the existing regime. In this respect, the extensive consideration of the Vietnamese intervention both at the Council and the Assembly,[41] contrasts sharply with the lack of discussion of the Tanzanian intervention in any of the organs of the UN. A second point of difference is that the Assembly gave recognition to the overthrown Pol Pot's government in the following ten years as the representative of Kampuchea,[42] whereas the new government of Uganda installed with the assistance of Tanzania was recognized by over sixty states at the end of 1980. The difference in reactions can be explained by

---

[39] *Ibid.*

[40] Quoted in Wheeler, *Saving Strangers,* 126.

[41] For its part, the Assembly considered and condemned the intervention in Kampuchea from session 34 to session 44 (1979-1989).

the relative insulation of Tanzania from superpower geopolitics, by the considerable agreement among states with Tanzania's claim that Uganda had attacked first as well as by the general contentment with regards to the removal of Amin regime, known with its widespread human rights abuses.[43]

Finally, when Israel launched a military operation to Lebanon in June 1982, it also justified its action on the basis of individual self-defense against the attacks across its northern border from PLO (Palestinian Liberation Organization) bases in southern Lebanon.[44] The reactions to Israeli intervention were overwhelmingly negative. At various Security Council meetings held during 1982, all countries, but the United States, regarded the Israeli action as an act of aggression and condemned it.[45] However, the United States veto prevented the Council to adopt a resolution to that effect.[46] The United States repeatedly stressed that cessation of hostilities by all parties and the Israeli withdrawal had to be implemented simultaneously.[47] Nevertheless, the resolutions of 5 and 6 July, adopted unanimously, expressed concern for the violation of the territorial integrity, independence and sovereignty of Lebanon, and called for a cessation of all military activities and unconditional Israeli withdrawal from Lebanon.[48] The following Security Council resolutions in the same year confirmed the Council's demand for an immediate cease-fire and withdrawal of

---

[42] The General Assembly denied recognition to the new government in Kampuchea in Resolution 34/22. GA Res. 34/22, 14 November 1979.
[43] For elaboration of these points regarding the international reactions, see Wheeler, *Saving Strangers*, 122-132.
[44] Israeli statement before the Security Council on 6 June 1982, *UN Yearbook* (1982), 435.
[45] *UN Yearbook* (1982), 433-440, 452-457, 466-470.
[46] The draft resolution introduced by Spain, condemning Israel, was not adopted due to the US veto on 8 June 1982. For the text of the draft resolution, see UN Doc. S/15185 (1982).
[47] See *UN Yearbook* (1982), 435-436, 440, 449.
[48] SC Resols. 508, 5 June 1982; 509, 6 June 1982.

all Israeli forces.[49] It was only in its 17 September resolution that the Council openly condemned subsequent Israeli incursions into Beirut in violation of the cease-fire agreements and of Security Council resolutions.[50] The general disapproval of Israeli action was most notably reflected in the General Assembly resolutions. In its seventh emergency special session, the General Assembly calling for withdrawal of Israeli troops, condemned Israel for its non-compliance with the Council resolutions of 5 and 6 June, and demanded that it comply.[51] During the consideration of the matter, Israel's claim to have acted in self-defense was rejected by a number of states.[52] Virtually all states pointed out that Israeli allegations were unconvincing, and that its action was one of aggression and invasion.[53] By a resolution adopted on 19 August, the Assembly once again condemned Israel for its non-compliance with the Council's resolutions.[54] In the subsequent resolutions on the matter, the Assembly expressed full support for the Council's demands for an immediate cease-fire and unconditional Israeli withdrawal from Lebanon, and called for strict respect of the territorial integrity, sovereignty, unity and political independence of Lebanon.[55] On the other hand, in a resolution on the self-determination of peoples, the Assembly condemned Israel's aggression against Lebanon in addition to reiterating the

---

[49] SC Res. 515, which demanded that Israel lift immediately the blockade of Beirut in order to permit the dispatch of supplies, passed by 14 to none, the US did not participate in the vote, 29 July 1982; SC Res. 516, which confirmed Council's previous resolutions, passed unanimously, 1 August 1982; SC Res. 517, which expressed deep shock and alarm at the deplorable consequences of the Israeli invasion of Beirut on 3 August 1982, was adopted by 14 to none, with 1 abstention (United States), 4 August 1982; SC Res. 518, which called for the immediate cessation of all military activities within Lebanon, was adopted unanimously, 12 August 1982.

[50] The resolution also called for strict respect of the sovereignty, territorial integrity, unity and political independence of Lebanon. SC Res. 520, 17 September 1982, adopted unanimously.

[51] GA Res. ES-7/5, 26 June 1982, adopted by 127 votes to 2 (Israel and the United States).

[52] The countries, which pointed out that the Israeli claim of self-defense was a pretext for its aggression included Iraq, Pakistan, Poland, Belgium on behalf of the EC members, Indonesia and Zaire. *UN Yearbook* (1982), 442. Among other states rejected the Israeli claim to have acted in self-defense were Mexico, Mongolia, Nigeria, Senegal and Uganda. *UN Yearbook* (1982), 460.

[53] *UN Yearbook* (1982), 440-447, 458-466, 470-474.

[54] GA Res. ES-7/6, 19 August 1982, adopted by 120 votes to 2 (Israel and the United States), with 20 abstentions.

Council's demands for Israeli withdrawal and respect for Lebanon's sovereignty and territorial integrity.[56] As such, the Israeli action raised extensive negative reactions from the international society.[57] The fact that it had been subject to encroachment of its territorial integrity was not considered to legitimize its operation against Lebanon on the grounds of self-defense.

With regards to military intervention on the basis of individual self-defense, the UN reaction to individual cases can be interpreted as in conformity both with the restrictive interpretation of Article 51 and the customary requirements of the exercise of the right of self-defense. In the Indian case, although not expressly condemning the intervention, the UN nevertheless considered it as an immediate threat to international peace and security. The absence of condemnation in the related resolutions can be interpreted as the admission of the Indian claim that the situation in concern constituted a threat to its vital security interests, whereby the target state is unable or unwilling to act. However, it can also be inferred from the reference to Article 2(4) and repeated calls for withdrawal of troops and cease-fire in the resolutions that the claim is not admitted as one providing basis for self-defense. Given the magnitude of action, it may be argued that although the Indian intervention might be considered to fulfill the conditions of necessity and immediacy, the UN did not qualify it as an act of self-defense due its disproportionate scale and consequence

---

[55] GA Resols. ES-7/9, 24 September 1982; 37/123 E, 16 December 1982.
[56] GA Res. 37/43, para. 22, 3 December 1982.
[57] For example, at the end of the 23rd European Council meeting in Brussels, which was held on 28-29 June 1982, the European states agreed that they had maintained "their vigorous condemnation of the Israeli invasion of Lebanon." Also, Yugoslavia asserted that military activities of Israel against the Palestinian forces in Lebanon was an act of aggression which ran "counter to the principles of the United Nations Charter and the wishes of the entire international community." See "23rd European Council Meeting in Brussels," and "12th Congress of League of Communists," *Keesing's* 28 (August 1982).

in relation to the aims allegedly pursued. On the other hand, the Israeli intervention may be said to be condemned largely in the absence of an actual armed attack by the state intervened and due to the extensive character of the operation, which led to military occupation of half of Lebanon, including Beirut. In addition to the absence of the conditions of self-defense, the express condemnation of the Israeli action may possibly be linked to the fact that Israeli action suppressed the struggle of Palestinian people for self-determination. This factor can be contrasted to the Indian action, in which one of the purposes was to ensure the Bengali people to achieve self-determination. Nonetheless, the application of this principle as justification of military intervention shall be discussed in Chapter I of Part III.

The UN reaction to Vietnam can also be viewed along the same lines. Despite the repeated Vietnamese complaints of Kampuchean aggression, the absence of an actual armed attack did not render its action as one of self-defense. Additionally, the UN's considerable negative reaction to Vietnamese action in contrast to the Tanzanian intervention may be said to be due to the fact that the Vietnamese action did not stop as soon as its alleged aim was realized and it retained an army of occupation in Kampuchea.[58]

1. 2. COLLECTIVE SELF-DEFENSE

In addition to individual self-defense, Article 51 also refers to collective self-defense. Indeed, the term "collective self-defense" is introduced to international law by the

Charter system, for under customary international law there exists no right of self-defense in response to an armed attack upon another state, unless the states in question are simultaneously attacked by the same aggressor.[59] With regards to the term "collective self-defense," Higgins argues that it is actually inaccurate, since "defense of the self cannot be collective."[60] Similarly, Kelsen maintains that self-defense is by definition unilateral in character, thus to speak of 'collective' unilateral right is to give way to self-contradiction. For him, the right of self-defense is "a right of the attacked or threatened individual or state, and of no other individual or state."[61] Bowett, on the other hand, asserts that the right of collective self-defense applies when each state, acting in concert for self-defense, has been attacked.[62] In this sense, collective self-defense refers to common, coordinated exercise of the right of individual self-defense by a number of states that were individually attacked. However, then, one may question the function of the term 'collective,' since such a usage assumes each state is exercising its individual self-defense -a right, which is already admitted under customary international law and the Charter. In this respect, Brownlie notes that the express recognition of a right of collective self-defense in, Article 51 refers to action beyond the sum of individual self-defense, and in fact serves to give a legal status to the use of force by a third state, which is not itself attacked or threatened, to assist a state exercising its individual right of self-defense.[63] For scholars supporting this view, the restrictive understanding of the right of collective self-defense undermines the effectiveness of the prohibition of the use

---

[58] Vietnam did not withdraw its forces from Kampuchea until late 1980s.
[59] Thomas and Thomas, Jr., *Non-intervention*, 169. Also Quincy Wright, "United States Intervention in the Lebanon," *American Journal of International Law* 53:1 (January 1959), 118.
[60] Higgins, *The Development of International Law*, 208.
[61] Hans Kelsen, *The Law of the United Nations* (London: Stevens & Sons Limited, 1951), 792.
[62] Bowett, *Self-Defense in International Law*, 216.

of force, since it leaves the weaker states vulnerable to the militarily stronger states, in cases where the Security Council fails to respond an armed aggression against a member state.[64]

Along with the controversy on the implications of the term, there seems to be differences of opinion on the circumstances and conditions that would allow states to intervene (or counter-intervene) in internal affairs under the principle of collective self-defense.[65] As to the circumstances, Higgins notes that the right of collective self-defense arises only when the interests of the attacked state is fundamentally linked with the territorial integrity and political independence of another state, "that the defense by the latter state of the former is truly 'self-defense'"[66] According to Goodrich and Hambro, the existence of a common threat is sufficient for collective response.[67] On the other hand, in the merits of the *Nicaragua* case, the International Court of Justice indicated that using force by a state against another which has undertaken a wrongful act against a third state, is regarded as lawful as long as "the wrongful act provoking the response was an armed attack."[68] Thus, the Court limited applicability of collective self-defense by asserting that the illegal acts involving force short of an armed attack do not raise such a right. The Court held as follows:

---

[63] Ian Brownlie, *International Law and the Use of Force by States* (London: Oxford University Press, 1963), 329.
[64] See for example, Bruno Simma (ed.), *The Charter of the United Nations, A Commentary* (Oxford: Oxford University Press, 1994), 675; and Leland M.Goodrich and Edvard Hambro, İlhan Lütem (trans.), *Birleşmiş Milletler Antlaşması: Şerh ve Vesikalar (Charter of the United Nations: Commentary and Documents)* (İstanbul: Fakülteler Matbaası, 1954), 327.
[65] See for example, John Norton Moore, "Toward an Applied Theory for the Regulation of Intervention," and Derek W. Bowett, "The Interrelation of Theories of Intervention and Self-Defense," in John Norton Moore (ed.), *Law and Civil War in the Modern World* (Baltimore: The Johns Hopkins University Press, 1974).
[66] Higgins, *The Development of International Law*, 209.
[67] M.Goodrich and Hambro, İlhan Lütem (trans.), *Birleşmiş Milletler Antlaşması*, 327.
[68] *ICJ Reports* (1986), para. 211.

> "In the view of the Court, under international law in force today —whether customary international law or that of the United Nations system— States do not have a right of 'collective' armed response to acts which do not constitute an 'armed attack'."[69]

With regards to the conditions, it is generally interpreted that the plea to collective self-defense by a third state must be based on previous consent, such as a prior treaty between the states acting in self-defense, or an express request by the attacked state.[70] This view by and large corresponds to the International Court of Justice's interpretation of the exercise of the right of collective self-defense. In its *Nicaragua* case judgment, the Court maintained that the exercise of the right of collective self-defense is permissible only if the victim of the alleged attack declares itself to have been attacked and requests aid from a third state.[71] Hence, according to the Court's judgment, the express request regardless of the existence of a prior legal bond, such as a treaty, is the necessary condition for invoking the right of collective self-defense.

A survey of the state practice largely conforms to the Court's judgment, and demonstrates that states intervened on the grounds of collective self-defense invariably relied on the existence of a request by the victim state. The aspect of 'request' or 'invitation' will be examined within the context of 'consent' in the next chapter. The following investigation of the cases will rather focus on the circumstances under which the right of collective self-defense has been raised, and examine whether the kind of threat against the target state is taken to warrant a right of collective self-defense in the UN responses.

---

[69] *ICJ Reports* (1986), para. 211.
[70] Antonio Cassese, *International Law in a Divided World* (New York: Oxford University Press, 1994), 236; Hüseyin Pazarcı, *Uluslararası Hukuk Dersleri*, IV. Kitap (Lectures in International Law, Book IV) (Ankara: Turhan Kitabevi, 2000), 121.
[71] *ICJ Reports* (1986), para. 199.

1. 2. 1. Military Interventions in Collective Self-Defense to Assist a State in Its Response to a Prior Foreign Aggression

These kinds of interventions include cases where there is an internal conflict and the concerned government invokes its right to self-defense against the intervention of a third state in support of insurgents. From the outset, it can be said that such interventions appear to be against both the prohibition of the use of force as set in Article 2(4) of the Charter and the general non-intervention principle in the domestic affairs. Nonetheless, it is clear that since it involves a prior military intervention by another state, it raises the right to self-defense under Article 51 on the part of the state to which such intervention was carried out. In practice, cases, which fall neatly in this type of interventions, are in fact very infrequent. In the post-Charter period, only the Cuban intervention in Angola in 1975, and the French and Zairean intervention in Chad in 1983 seem to belong to this category.

Cuba intervened in Angola when three factions were fighting for the independence of Angola against the Portuguese colonial rule in November 1975.[72] Cuba asserted that the Cuban intervention was a response to an earlier South African intervention upon the request from the MPLA administration (People's Movement for the Liberation of Angola) --the independence movement Cuba supported.[73] South Africa admitted its previous intervention and claimed that it had acted on the need to safeguard the installations at the Calueque Dam site due to the complete breakdown of law and

[72] For the details of the internal situation in Angola, see "Hostilities between MPLA, FNLA and UNITA," "Control of Luanda gained by MPLA, Participation of UNITA Forces in Fighting," "Achievement of Independence - State of Virtual Civil War - International Involvement - Establishment of Separate Governments by MPLA and FNLA, UNITA - Unilateral Declaration of Independence by Cabinda," *Keesing's* 21 (December 1975).

order, and that its forces remained there at the request of the Portuguese administration, which at the time was still in rule.[74] The representative of Portugal, however, in a letter dated 23 March 1976 to the UN Secretary General, denied the South African assertion that Portugal had given an advance authorization for such an action.[75] The following Security Council debates centered mainly on the South African intervention. While the Western countries, and Zaire and China condemned all forms of foreign intervention in Angola, most of the other states condemned only the South African intervention.[76] Accordingly, the resultant Security Council resolution, making references to the general principles of non-intervention and non-use of force, condemned the South African aggression against the sovereignty and territorial integrity of the People's Republic of Angola.[77] With regards to the Cuban intervention, the resolution made no mention. Thus, it will not be wrong to argue that the Security Council did not question the lawfulness of the Cuban intervention on the basis of collective self-defense.[78] The general tacit endorsement of Cuban intervention can also be inferred from the fact that the matter was not considered in the General Assembly.

One other intervention undertaken with the justification of assisting a state in self-defense against an armed aggression is the French and Zairean intervention in Chad

---

[73] *UN Yearbook* (1976), 174.
[74] Letter of 20 March from South Africa (annexing statement of 21 March 1976 by Prime Minister of South Africa, and statements of 12 and 15 March 1976 by Minister of Defense), UN Doc. S/12019 (1976).
[75] Letter of 23 March from Portugal, UN Doc. S/12023 (1976).
[76] For the views of the states expressed at the Security Council, see UN Documents S/PV. 1900-1906 (1976).
[77] SC Res. 387, 31 March 1976. Adopted by 9 votes to 0, with 5 abstentions (France, Italy, Japan, the United Kingdom and the United States; China did not participate in voting).
[78] One should note that the representatives of France, Italy, Japan, the United Kingdom and the United States stated that they abstained because the condemnation in the resolution did not extend to all foreign military intervention in Angola. See *UN Yearbook* (1976), 177-178.

in 1983.[79] While Zaire defended sending its forces as a response to the request of the legal government of Chad,[80] France declared that it had sent its troops as provided by the 1976 Cooperation Agreement[81] between the two countries and in accordance with international law embodied in the Charter, to assist that country in exercising its right to self-defense prompted by the Libyan armed aggression.[82] At the Security Council, although some states underlined the duty of non-intervention in general,[83] no state condemned the French intervention as such. A number of states supported the view that Libya undertook an intervention in the internal affairs of Chad, which fully justified Chad's appeal to its right of self-defense and request for military assistance of friendly states.[84] Despite efforts for Council action to call for an end to aggression, the withdrawal of armed forces intervening in Chad and the condemnation of Libyan aggression,[85] the Council did not take a position at the time, nor the matter was

---

[79] For the main facts of Chad's internal situation and Libya's support for the rebel forces, see "Civil War in North Libyan, French and Zairean Involvement;" for the details of the French intervention in Chad, see "Formation of French Defensive Line in 'Operation Manta', French Diplomatic Contacts With Libya," *Kessing's* 29 (December 1983).

[80] *UN Yearbook* (1983), 185.

[81] In 1976, Chad and France signed civil and military agreements, which superseded those of 1960 that had been signed at the time of Chad's independence from France. The new military agreement no longer contained an automatic clause for the defense of Chad by France in the event of an attack. See "New Co-operation Agreements with France – Continued Activities by Rebels – The Clauster Affair," *Kessing's* 22 (May 1976).

[82] For French justification, see *UN Yearbook* (1983), 185; also "French and Zairean Aid to Habre Government FANT Counter-offensive," *Keesing's* 29 (December 1983). Libya, however, denied that it had intervened in Chad's affairs and that it had sent troops there. For Libyan argument, see *UN Yearbook* (1983), 185. Also, at the opening of the 30th session of the Organization to African Unity's (OAU) liberation committee in Tripoli on 13 February 1978, Colonel Kadhafi, the Libyan leader, denied his country's involvement in Chad's civil war, which he described as "an internal problem between Chad people themselves." See "Suspension and Subsequent Restoration of Relations with Libya," *Keesing's* 29 (December 1983). And in a letter dated 28 June 1983, to the Ethiopian head of state, the then President of the OAU, Kadhafi stated that Libya "remained neutral in the power struggle between the Chadian factions." See, "French and Zairean Aid to Habre Government FANT Counter-offensive," *Keesing's* 29 (December 1983).

[83] Countries who opposed the French involvement were the USSR, Libya, Iran and Syria. *UN Yearbook* (1983), 185.

[84] Among the supporters were Egypt, the Ivory Coast, France, Guyana, Kenya, Liberia, the Netherlands, Somalia, Sudan, the United States and Zaire. For details of the debate on the matter, see UN Documents S/PV.2462, 2463, 2465, 2467, 2469 (1983); and *UN Yearbook* (1983), 184-187.

[85] Egypt, Kenya and the United States maintained that the Libyan aggression should be specifically condemned, while Benin insisted that the Council should call for the withdrawal of all non-African forces. *UN Yearbook* (1983), 186.

considered at the General Assembly. The UN inaction in this case may be said to imply that the UN did not challenge the legitimacy of the French argument of collective self-defense.

As a result, it can be said that the practice of the states and the UN response to military interventions to assist a state against a previous foreign aggression conform the general view that an external armed intervention confers a government the right of collective self-defense. The fact that the competing arguments in the above cases mainly called into question whether or not the internal body invoking the right of self-defense was the legitimate government, rather than the exercise of such a right when faced with armed aggression,[86] further reinforces the conclusion that in the face of a foreign armed intervention in support of rebels, a state has a right to request the military assistance of other states. Thus, in this sense, the opposing arguments in the above cases do not contradict with the UN's application of the principle of collective self-defense under the aforementioned circumstances, for they merely signify the differences in political judgment concerning the status of the internal administration appealing for help.

1. 2. 2. Military Interventions in Collective Self-Defense to Assist a State in Its Response to a Foreign Aggression By Irregular Forces

In this category, justification of collective self-defense for military intervention is raised due to the operations of irregulars, guerrillas, volunteers or mercenaries, which

[86] For example, the countries that opposed the French intervention in Chad (the USSR, Libya and Syria) supported the Cuban intervention in Angola. See, *UN Yearbook* (1976), 175.

do not carry an official character, that is to say, no state assumes responsibility for the actions undertaken by them.[87] Needless to say, under international law, insofar as such actions involve the use of force, they are banned by the terms of Article 2(4).[88] In addition, it is also established by various UN resolutions that even merely providing shelter or allowing operations from one's territory is a violation of Article 2(4). For example, the *Declaration on Principles of International Law* states that:

> "Every State has the duty to refrain from organizing or encouraging the organization of irregular forces or armed bands, including mercenaries, for incursion into the territory of another State."[89]

It further maintains that:

> "Every State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts when the acts referred to in the present paragraph involve a threat or use of force."[90]

Similarly, the 1974 *Definition of Aggression* listed "the sending by or on behalf of a state of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State" among prohibited forms of use of force.[91] The 1987 *Enhancement of the Effectiveness Declaration* also reiterated the states' duty to refrain from the above-mentioned acts.[92]

---

[87] Tanca, *Foreign Armed Intervention*, 62.
[88] On the illegality of such operations, see Brownlie, *International Law*, 370; and Bowett, *Self-Defense in International Law*, 49.
[89] GA Res. 2625 (XXV), para. 8 of the principle (a) on the Non-Use of Force, 24 October 1970.
[90] *Ibid.*, para. 9 of the principle (a) on the Non-Use of Force, 24 October 1970.
[91] GA Res. 3314 (XXIX), Article 3(g), 14 December 1974.
[92] GA Res. 42/22, *Declaration on the Enhancement of the Effectiveness of the Principle of of Refraining from the Threat or Use of Force in International Relations*, Part I, no. 6, 18 November 1987.

In addition, the International Court of Justice in its *Nicaragua* judgment confirmed that such activities constitute an "armed attack" and thus may give rise to self-defensive reaction:

> "There appears to be now general agreement on the nature of the acts which can be treated as constituting armed attacks. In particular it may be considered to be agreed that an armed attack must be understood as including not merely an action by regular armed forces across an international border, but also 'the sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to' (inter alia) an actual armed attack conducted by regular forces 'or its substantial involvement therein.' This description, contained in Article 3 para. (g) of the Definition of Aggression annexed to the General Assembly Resolution 3314 (XXIX) may be taken to reflect customary international law."[93]

The cases of military intervention with the justification of collective defense as a response to aggression by irregular troops are not very frequent.[94] However, two cases in particular seem to help reach conclusions regarding the matter in question. These are the Moroccan and Franco-Belgian interventions in Zaire, in 1977 and 1978 respectively.[95] In both cases, irregular forces entered Zaire's southern region of

---

[93] *ICJ Reports* (1986), para. 195.

[94] It should be admitted that the actual cases of such actions are most probably more than the ones considered here. However, given that such subversive actions are difficult to determine due to their covert nature and that claims of the existence of foreign subversion by states confronting internal disturbance are fairly common, only the cases which involve an external invasion by irregular troops on a significant scale and pose a grave danger to the target state, and where the involvement of a foreign power is by and large known, even though this power denies responsibility, are addressed in this section.

[95] One can possibly place the American intervention in Vietnam in this category. However, the difficulty with the assessment of this intervention stems from the existence of the conflicting interpretations of the facts, i.e. whether the conflict was an internal one belonging to the State of Vietnam as a whole, or an international one between the two states of North and South Vietnam, or an internal one within the State of South Vietnam. Depending on the interpretation taken, the legal analysis of the US involvement varies from one constituting "military assistance," "intervention," "aggression" or "an armed attack." Thus, due to the controversy on the facts of the Vietnam conflict, this intervention is not considered to be representative of any of the interventions discussed here. For different interpretations of the nature of the conflict, see Louis Henkin, *How Nations Behave: Law and Foreign Policy* (New York: Columbia University Press, 1979), 306.

Shaba from Angola, and took over most of the region.[96] In 1978, in addition to the invasion, increasing numbers of killings and harassment of the European population were reported as well.[97] In both cases, Moroccan and French/Belgian forces intervened upon the request of the Zairean government.[98] Among the countries expressed negative opinions to Moroccan intervention were the Soviet Union, Angola, Cuba, Algeria and Nigeria.[99] The 1978 French intervention, on the other hand, was condemned notably by Libya and Congo during the 31st meeting of OAU Council of Ministers,[100] and by Mozambique, Nigeria and Madagascar in the Assembly of OAU.[101] Notwithstanding the objections, many took the view that foreign aggression entitled Zaire to seek assistance abroad.[102] Neither of the cases became subject of discussion in any of the UN organs.

In conclusion, UN's inaction or indifference to the cases above suggests that use of force in collective self-defense to assist a state against the armed operations of irregular forces is implicitly considered to be admissible.

---

[96] "Invasion Launched from Angola by Former Katangese," "Invasion of Shaba Province," *Keesing's* 23 (June 1977); "Invasion of Shaba Province by Rebels - Arrival of French and Belgian Paratroops," *Keesing's*, 24 (August 1978).

[97] As a result, both France and Belgium laid much emphasis on the protection of nationals. "Invasion of Shaba Province by Rebels - Arrival of French and Belgian Paratroops," *Keesing's* 24 (August 1978).

[98] "Invasion Launched from Angola by Former Katangese," *Keesing's* 23 (June 1977); "Invasion of Shaba Province by Rebels - Arrival of French and Belgian Paratroops," *Keesing's* 24 (August 1978).

[99] "Conflicting Reactions among African Countries - Condemnation of French Action by Angola, Cuba and the Soviet Union," *Keesing's* 23 (June 1977).

[100] "31st Meeting of Council of Ministers," *Keesing's* 24 (October 1978).

[101] "Assembly of Heads of State and Government," *Keesing's* 24 (October 1978).

[102] For the approval of the Moroccan operation by most African countries and China, see "Conflicting Reactions among African Countries," *Keesing's* 23 (June 1977). As to the support voiced for the French intervention in 1978 by the EC and the African countries, see "Invasion of Shaba Province by Rebels - Arrival of French and Belgian Paratroops" and "Franco-African Conference of Heads of State or Government - Moves towards Formation of African Peace-keeping Force," *Keesing's* 24 (August 1978).

1. 2. 3. Military Interventions in Collective Self-Defense to Assist a State in Its Response to Subversion and Instigation of a Civil War by a Foreign Power

The forms of subversion which have raised a right of collective self-defense ranges from cases of actual infiltration by foreign agitators into the target state to incidents where hardly identified and barely established threat against the state's security was alleged.[103] As assessed above, such activities unquestionably constitute illegal conduct, particularly when they entail the use of force and threaten a state's security.[104] Yet, from a legal standpoint, these activities are not tantamount to an "armed attack" within the terms of Article 51. In the *Nicaragua* case, the Court adhered to a rigid concept of "armed attack":

> "The Court does not believe that the concept of "armed attack" includes not only acts by armed bands where such acts occur on a significant scale but also assistance to rebels in the form of the provision of weapons or logistical or other support. Such assistance may be regarded as a threat or use of force, or amount to intervention in the internal affairs of other States."[105]

In addition, because such activities are usually not easy to detect and prove, to raise the right of self-defense under customary international law in accordance with the *Caroline* conditions of the threat to be "instant, overwhelming, and leaving no choice of means and no moment for deliberation" is also hard to justify.[106]

Notwithstanding the problematical legal aspects in the exercise of the right of self-defense as a response to subversion, several cases were justified on some form of

---

[103] Tanca, *Foreign Armed Intervention*, 67-68.
[104] GA Res. 2625 (XXV), para. 9 of the principle (a) on the Non-Use of Force, 24 October 1970; *ICJ Reports* (1986), para. 195.
[105] *ICJ Reports* (1986), para. 195.
[106] Tanca, *Foreign Armed Intervention*, 69.

infiltration into the state assisted. The cases where such instances were sufficiently established comprise the British intervention in Muscat and Oman (1957) and in Jordan (1958), the United States intervention in Lebanon (1958), and the United States intervention in Central America, which began in 1981.

When Britain intervened in the Sultanate of Muscat and Oman in 1957, it argued that the British action was prompted by the request of the Sultan of Muscat to help him to restore order in the face of a revolt that had been encouraged and supported by subversive forces, which had been known to be active for some time.[107] The Arab countries requested the Security Council to put the matter on its agenda, claiming that the British action constituted an act of armed aggression.[108] However, this request was rejected by four members (Iraq, USSR, Sweden and the Philippines) voting in favor, five against (United Kingdom, France, Australia, Colombia and Cuba), and one abstaining (United States). China did not vote.[109] Among the countries, which voted against, the USSR and Iraq revealed intention of condemning the British intervention, while Sweden and Philippines argued that the consideration of the matter by the Security Council would give each party a chance to clarify their positions.[110]

Similarly, in the case of Lebanon, the United States justified its action on the basis of authorization from the Lebanese government as a response to the threat to its

[107] *UN Yearbook* (1957), 57.
[108] Letter of 13 August 1957 from Permanent Representatives of Egypt, Iraq, Jordan, Lebanon, Libya, Morocco, Saudi Arabia, Sudan, Syria, Tunisia and Yemen, UN Doc. S/3865 and Add. 1 (1957).
[109] *UN Yearbook* (1957), 58.
[110] *UN Yearbook* (1957), 57-58.

territorial integrity by rebellion stimulated and assisted from outside.[111] Lebanese government confirmed the US assertion, and maintained that Lebanon had invoked Article 51 to seek the direct assistance of friendly countries in the face of infiltrations originating from the United Arab Republic (Syria) aimed at overthrowing the existing regime in Lebanon.[112] Upon similar Jordanian complaints about the United Arab Republic's interference to its domestic affairs by subversive elements,[113] the Security Council decided to consider both matters concurrently. At the Council debate, Jordan stated that in accordance with Article 51, Jordan had asked British help, and the British representative maintained that the Jordanian request of a military assistance as a defensive measure was in full conformity with the United Nations Charter and with the established rules of international law.[114] The USSR challenged both interventions, stating that allegations of intervention by the United Arab Republic were unfounded, and thus both the US intervention in Lebanon and the British intervention in Jordan constituted "armed interventions in the domestic affairs of the Arab States" and a gross violation of the Charter.[115] On the other hand, the Swedish representative did not regard the US action in Lebanon was in accord with Article 51, since there had not been an armed attack within the terms of that article.[116] Consequently, failing to agree on a position, the Security Council called for an emergency special session of the General Assembly.[117] The General Assembly

---

[111] In addition, as will be discussed in the Chapter I of Part III, the US also justified its action on the basis of protection of its nationals. For detailed elaboration of the US justifications, see Wright, "United States Intervention in the Lebanon," 112-125. For detailed information on the Lebanese internal situation and the circumstances in which the US intervention was undertaken, see Malcolm Kerr, "The Lebanese Civil War" in Evan Luard (ed.), *The International Regulation of Civil Wars* (New York: New York University Press, 1972), 65-90.
[112] *UN Yearbook* (1958), 38-39.
[113] Letter from representative of Jordan, 17 July 1958, UN Doc. S/4053 (1958).
[114] *UN Yearbook* (1958), 41.
[115] *Ibid.*, 37, 39, 42.
[116] *Ibid.*, 40.
[117] SC Res. 129, 7 August 1958.

which met between 8 and 21 of August, adopted a resolution with generic emphasis on the principles of "mutual respect for each other's territorial integrity and sovereignty, of non-aggression, of strict non-interference in each other's internal affairs." The resolution also requested the Secretary-General to take the necessary steps to "facilitate the early withdrawal of the foreign troops from the two countries."[118]

The United States' involvement in Central America between 1981 and 1986 somewhat differ from the above cases in that it was by and large a covert operation.[119] The US action in support of the 'contras' fighting against the Sandinista government in Nicaragua was claimed to be a response in collective self-defense against the assistance provided by the Sandinistas to the insurgents in El Salvador.[120] However, serious doubts existed with respect to the main objective of the American operation that rather than helping El Salvador to halt the internal rebellion, it aimed to overthrow the Sandinista government in Nicaragua.[121] The Security Council discussed the matter a number of times upon repeated appeals from Nicaragua during 1982-1986. In the debates, while the USSR, and mostly the Eastern European and non-aligned countries held the United States responsible for the situation, Western European and Latin American states took a softer position.[122] In 1983, the Security Council unanimously adopted a resolution, which affirmed "the right of Nicaragua

---

[118] GA Res. 1237 (ES-III), 21 August 1958, adopted unanimously.
[119] For the relevant facts and the extent of the activities that the covert intervention involved, see David P. Forsythe, *The Politics of International Law: US Foreign Policy Reconsidered* (Boulder: Lynne Rienner Publishers, 1990), 31-38.
[120] Forsythe, *The Politics of International Law*, 38.
[121] Tanca, *Foreign Armed Intervention*, 72.
[122] See the relevant Security Council meetings, *UN Yearbook* (1982), 364-372; *UN Yearbook* (1983), 200-207; *UN Yearbook* (1984), 203-204, 207-211; *UN Yearbook* (1985), 212-218; *UN Yearbook* (1986), 183-194.

and of all the countries of the area to live in peace and security, free from outside interference."[123] Nicaragua continued to bring the claim to the Security Council that the United States was continuing its subversive activities. After the Council's failure to adopt a resolution in April 1984, calling for immediate cessation of the US activities against Nicaragua, because of the US veto,[124] Nicaragua brought the case before the International Court of Justice. The Court first ordered, as provisional measures, cessation of the US activities in Nicaraguan territorial waters,[125] then assumed jurisdiction to hear the case.[126] In early 1985, the US administration withdrew from the proceedings before the Court and it justified its activities in Nicaragua as an "exercise of the inherent right of individual and collective self-defense enshrined in the UN Charter and the Rio Treaty in defense of the vital national security interests of the United States interests and in support of the peace and security of the hemisphere."[127] On 27 June 1986, the Court rejected the "justification of collective self-defence maintained by the United States of America," and decided that the United States had acted in breach of its obligations under customary international law not to intervene in the affairs of another State and not to use force against another state.[128] The General Assembly considered the matter

---

[123] SC Res. 530, 19 May 1983.

[124] Draft resolution submitted by Nicaragua, UN Doc. S/16463 (1984). The vote was 13 to 1 (United States), with 1 abstention (United Kingdom). See *UN Yearbook* (1984), 207. It should be noted that the Security Council adopted one other resolution during the course of the conflict, urging the United States and Nicaragua to resume dialogue. SC Res. 562, 10 May 1985.

[125] For the operative provisions of the Court's order of 10 May 1984, see *UN Yearbook* (1984), 1084.

[126] For the operative provisions of the Court's judgment of 26 November 1984, see *UN Yearbook* (1984), 1085.

[127] For the official statement of withdrawal, together with the justification of the action in Central America, see *Department of State Bulletin* 85 (March 1985), 64-65. In connection with the right of self-defense, the United States also argued that a legal claim regarding self-defense could only be judged by the state, which raises such a right. However, the US did not act on this argument later, since this would have meant that it would be in no position to evaluate the claim of collective self-defense, which the Soviet Union raised in its invasion of Afghanistan in 1979. Forsythe, *The Politics of International Law*, 51.

[128] For the operative provisions of the Court's judgment of 27 June 1986, see *UN Yearbook* (1986), 981-983.

several times after the ICJ's judgment, and adopted resolutions emphasizing the duty of states under customary international law not to intervene in the internal affairs of other states and calling for "full and immediate compliance with the judgment of the International Court of Justice of 27 June 1986."[129]

As such, the US activities against Nicaragua were not regarded admissible on the basis of collective self-defense. In fact, as the ICJ stated in the merits of the *Nicaragua* case, even if the justification of self-defense was to be admitted, then there would have remained the question of proportionality -one of the main requirements of the exercise of the right of self-defense- between the response carried out by the US and the action undertaken by Nicaragua. In this respect, the Court stated that:

> "Since the Court has found that the condition *sine quo non* required for the exercise of the right of collective self-defence by the US is not fulfilled in this case, the appraisal of the United States activities in relation to the criteria of necessity and proportionality takes on a different significance. As a result of this conclusion of the Court, even if the US activities in question had been carried on in strict compliance with the canons of necessity and proportionality, they would not thereby become lawful. If however they were not, this may constitute an additional ground of wrongfulness."[130]

Moreover, the fact that the US activities were not limited to the territory of El Salvador to help that country to cope with the alleged infiltrations of subversive elements from Nicaragua, but instead extended to the Nicaraguan territory raised serious suspicions about the US claim of assisting El Salvador in connection with the right of collective self-defense.

---

[129] See GA Resols. 41/31, 3 November 1986; 42/18, 12 November 1987; 43/11, 25 October 1988; 44/43, 7 December 1989.
[130] *ICJ Reports* (1986), para. 237.

As a result, the American conduct in Central America appears to be the intervention criticized most by the international community. The other cases that are examined in this category did not provoke the UN's condemnation. The general indifference, if not substantial approval, of the UN to these cases suggests that foreign infiltration was accepted as a circumstance that rendered these interventions permissible, regardless of the difficulty in characterizing such subversive activities as tantamount to "armed attack."[131]. Nonetheless, one should note that in these interventions, there also existed the consent of the intervened state. Thus, whether the existence of the element of request expressed by the respective governments of the target states, or the acceptance of the right of the self-defense under circumstances in question, that removed negative reactions, is not so clear-cut.

1. 2. 4. Military Interventions in Collective Self-Defense to Assist a State in Its Response to an Alleged External Threat

This category differs from the previous type essentially by the ambiguous, unidentified and unproved character of the alleged external threat. These cases include the Soviet interventions in Hungary (1956), Czechoslovakia (1968) and Afghanistan (1979-1980) and the United States interventions in the Dominican

[131] For example, in response to El Salvadoran claim that the supply of arms to the opposition forces in El Salvador by Nicaragua justifies "invocation of the right of collective self-defense in customary international law" and "would have to be equated with an armed attack by Nicaragua on El Salvador," the Court stated that: "the Court is unable to consider that, in customary international law, the provision of arms to the opposition in another State constitutes an armed attack on that State. Even at a time when the arms flow was at its peak, and again assuming the participation of the Nicaraguan Government, that would not constitute such armed attack." *ICJ Reports* (1986), para. 230. The statements to the same effect can also be found in para. 195. See, note 105.

Republic (1965) and Grenada (1983).[132] Common to all these interventions is that the intervening countries had a political interest in undermining the status quo in the target state, and that in none of the cases, the alleged foreign threat was substantially verified.[133] Not surprisingly, with the possible exception of the intervention in the Dominican Republic, whereby the US action was condemned by a few countries, the reactions of the international community to these interventions were largely negative.

During the Security Council consideration of the Hungarian question,[134] the USSR representative claimed that in response to an appeal by the Hungarian government and in conformity with the Warsaw Treaty, the Soviet military units had gone to the help of Hungarian forces to suppress the counter-revolutionary uprising, which was assisted by the United States.[135] Despite the general condemnation of the Soviet action in the Security Council, the Council failed to adopt a revised US draft resolution due to the Soviet veto, whereby the Security Council would call upon the USSR not to introduce additional armed forces into Hungary and to withdraw all of its forces from that country.[136] Consequently, the Security Council passed a resolution by which the Council decided to call an emergency special session of the General Assembly to consider the situation in Hungary.[137] In the inclusion of the matter in the Assembly's agenda on 4 November 1956, it was stated that recent events in Hungary had demonstrated that, in contravention of Article 2(4), both the threat and use of force had been employed against the political independence of

---

[132] The justification of collective self-defense in the United States' interventions in the Dominican Republic and in Grenada was secondary to the protection of the American and other foreign citizens.
[133] Tanca, *Foreign Armed Intervention*, 73.
[134] For the account of events in Hungary leading to Soviet intervention, see Peter Calvocoressi, *World Politics Since 1945* (New York: Longman, 1996), 294-296.
[135] *UN Yearbook* (1956), 68.
[136] United States' draft resolution and revision, UN Doc. S/3730 and Rev. 1 (1956).

Hungary.[138] On the same day, the General Assembly adopted a resolution "condemning the use of Soviet military forces" in Hungary. The resolution called upon the USSR to end "any form of intervention, in particular armed intervention, in the internal affairs of Hungary," and to "withdraw all of its forces" from Hungary.[139] During its further consideration of the question, the Assembly adopted several other resolutions with large majorities, which considered foreign intervention in Hungary as a violation of the political independence of Hungary and of Charter, condemned the USSR for its violation of the Charter, and called upon the USSR to desist from its intervention in the internal affairs of Hungary and to withdraw its forces.[140]

In the case of the Soviet and Warsaw Pact states' intervention in Czechoslovakia in 1968,[141] once again the right of collective self-defense against the threat to the socialist system in Czechoslovakia posed by the counter-revolutionary forces that were assisted by foreign forces hostile to socialism, was invoked. The *Tass* news agency published a statement claiming that the Czechoslovak party and government leaders requested urgent assistance from the Soviet Union and other allied states to meet the threat "which has arisen to the socialist system in Czechoslovakia, a threat emanating from the counter-revolutionary forces which have entered into collusion with foreign forces hostile to socialism."[142] Also, in a letter to the President of the Security Council, the USSR argued that the sending of military forces by the socialist

---

[137] SC Res. 120, 4 November 1956.
[138] *UN Yearbook* (1956), 70.
[139] GA Res. 1004 (ES-II), 4 November 1956. The resolution was adopted by 50 votes to 8, with 15 abstentions. The countries voted against comprise mainly the socialist countries.
[140] See GA Resols. 1005 (ES-II), 9 November 1956; 1127 (XI), 21 November 1956; 1130 (XI), 4 December 1956; 1131 (XI), 12 December 1956. The contrary votes to these resolutions were those of socialist states.
[141] For the account of events concerning the occupation of Czechoslovakia by the USSR and other members of the Warsaw Pact, see Calvocoressi, *World Politics Since 1945*, 296-300.

countries was in accordance with mutual treaty obligations, at the request of the government of Czechoslovakia, and on the basis of the relevant provisions of the Charter regarding individual and collective self-defense.[143] In a similar vein, during the Security Council debates, the representatives of the USSR, Bulgaria, Hungary and Poland insisted that there had been attempts to encourage internal counter-revolution in Czechoslovakia by imperialist states, particularly North Atlantic Treaty Organization powers, and that there was an appeal from the lawful authorities in Czechoslovakia for assistance under existing treaty obligations.[144] Majority of the countries speaking before the Security Council found the alleged claims unsupported. Moreover, the representative of Czechoslovakia, Jiri Hajek, speaking as a member of the Czech government, stated that there was no external threat and danger of counter-revolution in Czechoslovakia.[145] Canada, China, Brazil, Denmark, Ethiopia, France, Paraguay, Senegal, the United Kingdom, the United States, Yugoslavia condemned the intervention in the internal affairs of Czechoslovakia as a gross violation of the sovereignty and territorial integrity of an independent country as well as of the principles of the Charter.[146] Notwithstanding the general disapproval of the intervention, a draft resolution, which would condemn the armed intervention of the USSR and other members of the Warsaw Pact in the internal affairs of Czechoslovakia, and call upon them to cease all other forms of intervention in Czechoslovakia's internal affairs, failed to be adopted due to the negative vote of the

---

[142] For the text of the *Tass* statement, see "The Soviet Invasion," *Keesing's* 14 (September 1968).
[143] Letter of 21 August 1968 from USSR, UN Doc. S/8759 (1968).
[144] *UN Yearbook* (1968), 299-300.
[145] *Ibid.*, 303.
[146] *Ibid.*, 299-302.

USSR.[147] The question of Czechoslovakia was not considered by the General Assembly.

During the Soviet intervention in Afghanistan in late 1979,[148] a right of collective self-defense against an external threat was also invoked.[149] The Security Council held six meetings on the question between 5 and 9 January 1980. The representative of the USSR alleged that the United States and certain other Western powers, together with China, had interfered in Afghanistan's internal affairs through attempts to generate counter-revolution. He contended that the Soviet decision to send a military contingent to Afghanistan was taken in response to the appeal of the Afghan government for support to repel armed intervention from outside, in accordance with the provisions of mutual treaty obligations.[150] In support of the Soviet argument, the German Democratic Republic stated that the Soviet military assistance was in conformity with the inalienable right of states to individual and collective self-defense as confirmed by the Charter.[151] Nonetheless, the Soviet invasion was overwhelmingly opposed and heavily criticized in the Council.[152] A draft resolution, which would deplore the armed intervention in Afghanistan, however, was not adopted as a result of the Soviet veto.[153] Consequently, the Security Council called

---

[147] Draft resolution co-sponsored by Brazil, Canada, Denmark, France, Paraguay, Senegal, United Kingdom, United States, UN Doc. S/8761 and Add.1 (1968). The resolution failed by 10 votes in favor, 2 against (Hungary and USSR), with 3 abstentions (Algeria, India and Pakistan).

[148] For detailed information on the Soviet action, see "Airlift Soviet Troops into Afghanistan – Overthrow of President Amin," *Keesing's* 26 (May 1980).

[149] In addition, the Soviet Union also defended its action on the basis of the request of the Afghan government and pursuant to the 1978 Friendship Treaty signed between Afghanistan and the Soviet Union. For examination of these justifications, see Chapter II of Part II.

[150] *UN Yearbook* (1980), 297-298.

[151] *Ibid.*, 297.

[152] For the opposing views by most of the Council members as well as by the majority of the 32 states that participated in the discussion without the right to vote, see *UN Yearbook* (1980), 298.

[153] Draft resolution sponsored by Bangladesh, Jamaica, Niger, Philippines, Tunisia, Zambia, UN Doc. S/13729 (1980). It received 13 votes in favor to 2 against (German Democratic Republic, USSR).

for an emergency special session of the General Assembly to examine the situation in Afghanistan and its implications for international peace and security.[154] At the end of the emergency special session, the Assembly adopted a resolution by overwhelming majority, which, recalling its resolutions on the inadmissibility of intervention in the domestic affairs of states, strongly deplored the armed intervention in Afghanistan and appealed to all states "to refrain from any interference in the internal affairs of that country."[155] During the debates before the vote, the Soviet Union reiterated that its action was compatible with the right of individual and collective self-defense enshrined in the Charter. However, most opposing views denied the existence of an external threat which rendered the claim of self-defense unfounded and the Soviet act as interference in a state's internal affairs in violation of international law as well as of the principles of the Charter.[156] Another resolution adopted in the same year, again by a notable majority, called for the immediate withdrawal of the foreign troops from Afghanistan.[157] In the following resolutions, the General Assembly reiterated its concern with the continuing foreign armed intervention in Afghanistan and its call for the withdrawal of foreign troops from this country, with emphasis on strict observance of the principle of non-interference in internal affairs.[158]

The right of collective self-defense was also invoked by the United States for its intervention in the Dominican Republic (1965),[159] and by the Caribbean states

---

[154] SC Res. 462, 9 January 1980.
[155] GA Res. ES-6/2, 14 January 1980. The resolution passed with 104 votes in favor and 18 against, with 18 abstentions. The negative votes belonged mostly to the socialist countries.
[156] *UN Yearbook* (1980), 299-301.
[157] GA Res. 35/37, 20 November 1980, adopted by 111 to 22, with 12 abstentions.
[158] See GA Resols. 36/34, 18 November 1981; 37/37, 29 November 1983.
[159] For the details of the Dominican civil war, see "Outbreak of Civil War. - Fighting between Pro-Bosch and Anti-Bosch Factions – Formation of Military Junta," *Keesing's* 11 (July 1965). For factual information on the US intervention in the Dominican Republic, see "Landing of American Troops. -

participating to the multinational force led by the United States for the intervention in Grenada (1983),[160] but only as a secondary justification. After his initial justification of protection of lives and safety of American citizens,[161] President Johnson argued that the United States action in the Dominican Republic also aimed to prevent a communist take-over in this country.[162] Five days after the American landing in the Dominican Republic and the evacuation of some 3000 Americans and other foreigners, in a television broadcast on 2 May 1965, President Johnson contended that the communist leaders, many of them trained in Cuba, had taken increasing control of the revolutionary movement, and as a result what began as a "popular democratic revolution committed to democracy was taken over ...and placed into the hands of a band of Communist conspirators." He further declared that "the American nations cannot, must not, and will not permit the establishment of another Communist government in the Western Hemisphere." Thus, the US mission, he maintained, also included preventing the emergence of another Communist state in the hemisphere.[163] Consequently, the President drew on the communist threat as a

---

Evacuation of U.S. and Foreign Nationals. - Arrival of O.A.S. Peace-Mission. – Temporary Cease-Fire," *Keesing's* 11 (July 1965).

[160] For the background of the events leading to the intervention, see "Military Coup – Intervention by US and Caribbean Forces," "Background to the Coup," "Removal of Mr. Bishop – Establishment of Revolutionary Military Council – Reactions from other Caribbean States," *Keesing's* 30 (January 1984).

[161] Statement of President Johnson reprinted in *Department of State Bulletin* 52 (1965), 738. See also letter of 29 April 1965 from the United States to the Security Council (enclosing statement by President of United States on Dominican Republic situation, issued at 9 pm, 28 April 1965), UN Doc. S/6310 (1965).

[162] Statement by President Johnson reprinted in *Department of State Bulletin* 53 (1965), 55-60. For the argument that the US action is justified as collective self-defense against a communist threat, see C.G. Fenwick, "The Dominican Republic: Intervention or Collective Self-Defense," *American Journal of International Law* 60:1 (1966), 64-67. For an opposite view, see R. T. Bohan, "The Dominican Case: Unilateral Intervention," *American Journal of International Law* 60:4 (1966), 809-812.

[163] "President Johnson's Warning of Communist Threat in the Dominican Republic – Reinforcement of American Troops," *Keesing's* 11 (July 1965). The same argument was also presented by the United States during the Council consideration of the matter in May 1965. See *UN Yearbook* (1965), 141. It has to be noted however that Johnson's allegations regarding the communist control of the rebellion was rejected by the ousted President of the Dominican Republic, who declared in a radio interview on 3 May 1965 that there was absolutely no justification for the US military intervention, and maintained

justification for sending an additional 15,000 troops to the Dominican Republic. Condemning the US armed intervention as an act of direct aggression that violated the UN Charter and an action for the repression of a national liberation movement, the Soviet Union renounced the US argument of "threat of communism in the Dominican Republic" as groundless.[164] The representative of Uruguay criticized Johnson's reasoning of considering revolutions as domestic problems, but deeming those aimed to establish a communist regime as a basis for hemispheric action.[165] This kind of thinking, he argued, was not compatible with the principle of self-determination. Participating the Council debates on his request, the Cuban representative also pointed out the denial of self-determination. Among the opposing states was also Jordan, whose representative at the Council maintained that the uprising in the Dominican Republic was an internal matter, and thus the US armed intervention was based exclusively on its own assessment of the situation there.[166] As such, the opposing views emphasized that the US action constituted intervention in the internal affairs and violation of the sovereignty of an independent state.[167] It

---

that the uprising was entirely democratic, that it was in no way under Communist control. For details of his statement, see "Ex-President Bosch Repudiates US Allegations of Communist Direction of Rebellion – Latin American Reactions to US Military Intervention," *Keesing's* 11 (July 1965).

[164] *UN Yearbook* (1965), 142.

[165] In his statement on 2 May 1965, President Johnson declared that: "Revolution in any country is a matter for that country to deal with. It becomes a matter calling for hemispheric action only when the object is the establishment of a Communist dictatorship." See "President Johnson's Warning of Communist Threat in the Dominican Republic – Reinforcement of American Troops," *Keesing's* 11 (July 1965).

[166] *UN Yearbook* (1965), 141-143. It has to be noted that France also strongly criticized the US intervention, but its opposition was more to do with the justification of protection of nationals. Another noteworthy criticism regarding the extent of the communist threat came from the US Senator Fulbright four months after the intervention. He held that the administration's premise that the Dominican revolution was communist-controlled had never been established. See "Senator Fulbright's Criticisms of US Intervention in Dominican Republic," *Keesing's* 11 (September 1965).

[167] As a general remark, Malaysia also underlined that the principle of non-interference represented the very basis of the UN Charter, and thus no government could claim the right to intervene in the affairs of any state outside the scope of the Charter. *UN Yearbook* (1965), 143.

was only the British representative that expressed full support for the US action.[168] Other states, notably Malaysia, the Netherlands, Bolivia and China, supported the OAS (Organization of American States) action to deal with the situation in the Dominican Republic.[169] Two resolutions adopted on 14 May 1965 and 22 May 1965, called for strict cease-fire.[170] The Soviet draft resolution, which would condemn the intervention as a gross violation of the United Nations Charter as well as call for the withdrawal of the US troops, was defeated on 25 May 1965.[171]

Similarly, during the intervention in Grenada, after defending the action on the grounds of protection of the lives of Americans and restoration of law and order, the United States and the participating Caribbean states later also justified the intervention in broader terms, as one in accordance with Article 8 of the Organization of East Caribbean States (OECS) Treaty, which stipulates collective defense.[172] Speaking in the Security Council on 27 October 1983, the US

---

[168] However, the British support was based on the US justification of the urgent need of the protection of American citizens and other foreign nationals.

[169] *UN Yearbook* (1965), 142-143.

[170] SC Res. 203, 14 May 1965, adopted unanimously; SC Res. 205, 22 May 1965, adopted by 10 votes to 0 with 1 abstention (United States).

[171] For the text of the Soviet draft resolution, see UN Doc. S/6328 (1965). The operative paragraphs of the resolution were voted separately. The first paragraph condemning the US intervention, was supported only by the USSR itself, while the second paragraph, calling for the withdrawal of the US troops, was supported by the Soviet Union and Jordan. Voting against both paragraphs were the United States, the United Kingdom, China, the Netherlands, Bolivia and Uruguay, while France, the Ivory Coast and Malaysia abstained on both paragraphs. Another draft resolution which would call on all countries to avoid helping either of the "contending factions" failed to be adopted by 5 votes in favor (Uruguay, France, Jordan, Ivory Coast and Malaysia), 1 against (Soviet Union) and 5 abstentions (United States, United Kingdom, China, Netherlands and Bolivia. For the text of the draft resolution proposed by Uruguay, see UN Doc. S/ 6346/Rev.1 (1965). For the details of the Security Council debates, see "Security Council Debates – British and French Reactions to Dominican Situation – French Criticisms of US Military Intervention in Santo Domingo," *Keesing's* 11 (July 1965).

[172] Max Hilaire, *International Law and the United States Military Intervention in the Western Hemisphere* (The Hague: Kluwer Law International, 1997), 81; Scott Davidson, *Grenada: A Study in Politics and the Limits of International Law* (Aldershot, England: Avebury, 1987), 86-88. It has to be noted that Article 8 of the OECS Charter limits defensive action to "external aggression." Moreover, this argument was especially put forward by the United States, Barbados and Jamaica, which are not members of the OECS. For the text of the OECS Treaty, see

representative, Jeane Kirkpatrick argued that as a result of RMC's (Revolutionary Military Council) coup,[173] the military power which Grenada had accumulated "with Cuban and Soviet military backing had fallen into the hands of individuals who could reasonably be expected to wield that power against its neighbours."[174] In the OECS statement transmitted to the Council, it was maintained that extensive military build-up in Grenada had created a threat to OECS and neighboring countries, and thus the action was one of collective self-defense pursuant to Article 8 of the OECS treaty.[175] The reactions at the Security Council were overwhelmingly negative. Virtually all states, except the United States and its Caribbean allies, expressed outright rejection of all the legal justifications presented by the intervening states, and pointed out the lack of substantial evidence of the claims.[176] For example, the Iranian representative rejected all the legal justifications presented, which he considered formulated by the invading forces to justify their aggression.[177] Similarly, the Jordanian President of the Council observed that the intervention resembled a case of "invade first and then look for the justification."[178] As to the collective self-defense argument, the Polish representative, among others, held that there was no military attack, "which would justify a defensive military action."[179] In addition, a number of states pointed out that Article 8 of the OECS treaty permitted self-defense only in response to external aggression, which was not existent in the case concerned, and that collective self-

---

http://www.oecs.org/assets/OECS_Treaty.pdf. For detailed analysis of the claim that the OECS had the authority to engage in military intervention in Grenada on the basis of the OECS Charter, see Forsythe, *The Politics of International Law*, 74-75.

[173] For the details of the military coup, see "Removal of Mr. Bishop - Establishment of Revolutionary Military Council – Reactions from Other Caribbean States" *Keesing's* 30 (January 1984).

[174] UN Doc. S/PV.2491 (1983), 37.

[175] UN Doc. S/16070 (1983).

[176] Among the countries opposing the action were also the US allies, such as Canada, Italy, Australia, France, West Germany and Belgium. *UN Yearbook* (1983), 211-214.

[177] UN Doc. S/PV. 2489 (1983), 78-80.

[178] UN Doc. S/PV.2491 (1983), 192.

[179] UN Doc. S/PV.2489 (1983), 22.

defense action could, in any case, can only be carried out upon the request of the victim state itself.[180] Furthermore, the representative of Grenada, participated in the Council debate at its request, stated that its current situation was of an entirely internal nature, and that it had not threatened the use of force against any country.[181] A resolution of condemnation introduced by Guyana, Nicaragua and Zimbabwe was vetoed by the US.[182] Nevertheless, an almost identical resolution of condemnation, declaring the US armed intervention as "flagrant violation of international law and of the independence, sovereignty and territorial integrity" of Grenada, passed easily in the General Assembly.[183] Both the defeated Council resolution and the General Assembly resolution cited Article 2(4), the *Declaration on Principles of International Law*, and the *Declaration of the Inadmissibility of Intervention and Interference in the Internal Affairs* as the main documents of reference in deploring the intervention.

Thus, on the whole, the UN reactions to the above military interventions in collective self-defense in response to a purported external threat, with the exception of the Czechoslovak case where the UN failed to condemn the intervention due to the Soviet veto, were robustly negative.[184] However, one cannot fail to notice that the criticism and condemnation largely focused on the very existence of the alleged

---

[180] Among those countries contending OECS treaty did not allow for the action in question were Mexico, Cuba, Ethiopia, Algeria and Mongolia. See UN Doc. S/PV.2491 (1983).

[181] *UN Yearbook* (1983), 212. It should be noted that the US objected to the credentials of the Grenada representative. *UN Yearbook* (1983), 214.

[182] UN Doc. S/16077.Rev.1 (1983). The resolution was defeated by 11 (China, France, Guyana, Jordan, Malta, Netherlands, Nicaragua, Pakistan, Poland, USSR, Zimbabwe) to 1 (USA) with 3 abstentions (Togo, United Kingdom, Zaire).

[183] GA Res. 38/7, 2 November 1983. The resolution was adopted by 109 to 9 (the US, the Caribbean states together with El Salvador and Israel) with 27 abstentions.

[184] One can possibly leave the US intervention in the Dominican Republic out of the group of the disapproved interventions of this type as well, since the UN response was limited to calls for cease-fire in two Council resolutions, with no Assembly consideration of the matter at all.

situation, rather than the validity of the claim of the right of collective self-defense in response to an external threat. By implication then, one can conclude that the United Nations has not endorsed a right of collective self-defense where there was no significant evidence provided to substantiate allegations of a foreign threat.

In concluding this section on the interventions justified as collective self-defense, certain observations follow. Firstly, it appears from the above survey of the UN reactions to the interventions that the United Nations generally tend to affirm the right of third states to assist a state facing an aggression. Second, the UN seems to apply the principle regardless of the nature of the aggression, which allegedly invoked the right of collective self-defense. In this respect, the key issue appears to be the perception of the danger or threat posed to the security of the target state by the action in question. Insofar as the external involvement was taken to pose a serious danger to the target state, which requires an immediate response, the United Nations reaction was not one of strong condemnation. Thus, it is not the character of the action that provoked the intervention, but rather the degree of the effects of such conduct that has been a determining factor in characterizing the attitude taken towards the intervention in question. In other words, to the extent that the danger to the security of the state is imminent and grave, and cannot be responded by any other means short of an immediate forcible reaction is accepted, so is the intervention. Thus, in contrast to the exercise of the right of individual self-defense, the UN has treated the concept of "armed attack" broadly in collective self-defense cases. In this respect, the UN appears to adhere to the customary criteria of self-defense, namely necessity, immediacy and lack of no other means in cases of collective self-defense in response to actions not amounting to an "armed attack." On the other hand, it is

notable that in all of the above cases, the plea to collective self-defense is always accompanied with the element of 'consent.' In this connection, one should recall the ICJ's judgment in the *Nicaragua* case that maintains:

> "At all events, the Court finds that in customary international law ..., there is no rule permitting the exercise of collective self-defense in the absence of a request by the State which regards itself as the victim of an armed attack. The Court concludes that the requirements of a request by the State which is the victim of the alleged attack is additional to the requirement that such a State should have declared itself to have been attacked."[185]

From the Court's formulation, it follows that, as mentioned elsewhere, the conditions of collective self-defense are the request of the attacked state and the declaration of having been attacked. In fact, collective self-defense is one among the other justifications that are closely linked to the element of 'consent.' Hence, it is now necessary to turn attention to 'consent' as a determinant of the legality of military intervention in the UN's response.

[185] *ICJ Reports* (1986), para. 199.

CHAPTER II:

CONSENT OF THE TARGET STATE

In international law, the concept of 'consent' is admitted to be one of the conditions that disqualify the wrongfulness of otherwise wrongful acts carried out by states.[1] In regard to military intervention, the logical implication then is when a state agrees to an intervention in its internal affairs by another state, the element of coercion –an essential qualification of the concept of intervention- is eliminated, which in turn eradicates the wrongfulness of the act of intervention.[2] In this respect, some authors argue that where there is an element of consent, it will not be meaningful to label the type of interference in question as 'intervention,' insofar as intervention represents "an act or threat of compulsion or coercion of the will of a state by another, an imposition of the will of the intervenor."[3] With respect to the prohibition of the use of force, the element of 'consent' has also the effect of precluding the application of the proscription. An armed intervention, which would in general be considered as an

---

[1] Article 20 under Chapter V (Circumstances precluding wrongfulness) of the *Draft Articles on Responsibility of States for Internationally Wrongful Acts* reads as follows: "Valid consent by a State to the commission of a given act by another State precludes the wrongfulness of that act in relation to the former State to the extent that the act remains within the limits of that consent." Adopted by the Intenational Law Commission at its fifty-third session (2001), *Official Records of the General Assembly, fifty-sixth session*, No. 10, UN Doc. A/56/10, chp. IV.E.1 (2001).

[2] Ann Van Wyen Thomas and A. J. Thomas, Jr., *Non-intervention, The Law and Its Import in the Americas* (Dallas: Southern Methodist University Press, 1956), 91; Ian Brownlie, *International Law and the Use of Force by States* (London: Oxford University Press, 1963), 317.

act of aggression, would cease to be typified as such and turn into a lawful act if it takes place with the consent of the state.[4] For example, in its *Nicaragua* judgment, ICJ implicitly recognized that intervention is allowable "at the request of the government of a state."[5] On the other hand, there is no doubt that by virtue of the principle of sovereignty enshrined in Article 2(1) of the United Nations Charter, states are entitled to request military assistance in time of emergency even though such an aid would impair their exercise of sovereignty.[6] Having assessed the legal function of 'consent' and its relevance to military intervention in the internal affairs, the central question appears to be not so much that of establishing the admissibility of consent as a justification for intervention, but rather one of identifying the conditions for its validity.[7] Needless to say, the circumstances in which the interventions occurred vary from one case to another. Nonetheless, consent of the intervened state as a legal ground for intervention seems to take two forms: either given as an *ad hoc* invitation or given in advance by a previous treaty.[8] In this respect, the most problematic issue emerges to be the question of the legitimacy of the authority giving consent.[9]

---

[3] Thomas and Thomas, Jr., *Non-intervention,* 91. For a similar view, see Rein Mullerson, "Intervention by Invitation" in Lori Fisler Damrosch and David J. Scheffer (eds.), *Law and Force in the New International Order* (Boulder: Westview Press, 1991), 127.

[4] Antonio Tanca, *Foreign Armed Intervention in Internal Conflict* (The Netherlands: Martinus Nijhoff Publishers, 1993), 19; Brownlie, *International Law,* 317, 320.

[5] *ICJ Reports* (1986), para. 246.

[6] Quincy Wright, "United States Intervention in the Lebanon," *American Journal of International Law* 53:1 (January 1959), 119. For the same principle in traditional international law, see Antonio Cassese, *International Law in a Divided World* (Oxford: Clarendon Press, 1994), 239.

[7] Tanca, *Foreign Armed Intervention,* 23.

[8] Robert Jennings and Arthur Watts, *Oppenheim's International Law,* Volume I (Harlow, England: Longman, 1992), 435.

[9] Ruth Wedgewood, "Commentary on Intervention by Invitation" in Damrosch and Scheffer (eds.), *Law and Force,* 138.

Almost in all cases of military interventions under investigation, the principle of consent has been invoked along with other justifications. States are alleged to have requested foreign military assistance either in response to external attacks or threats of attack, or to tackle internal conflict. With respect to the former situation, the request for assistance has been raised in connection with the right of collective self-defense, which is examined in Chapter I of Part II. Thus, this chapter will mostly focus on the latter cases, namely cases whereby the interventions occurred in the form of assistance to the inviting authority in an internal conflict situation. In addition, the cases of interventions at the request of the target state where the external involvement in any form was considered to be the cause of the internal disturbance are also scrutinized.

Three general characteristics of the inviting authority in relation to the internal situation can be distinguished. First, there are cases where the incumbent government with a relatively considerable degree of effectiveness nevertheless confronting an internal insurgence expresses request for assistance. Second, there are situations where there is an internal disorder with distinct factions fighting, and the consent is given by the government representing one of them. Third, there are instances where the entity requesting aid, although has formal authority, neither represents a certain faction nor enjoys effective power, in which case the intervention is aimed "to restore order."[10] Finally, there are those interventions, which fall into none of these categories. Those cases will be discussed with emphasis on the specific problems they pose.

[10] This classification of the cases based on the characteristics of the inviting authority vis-à-vis the internal situation is borrowed from Tanca, *Foreign Armed Intervention,* 25.

2. 1. MILITARY INTERVENTIONS AT THE REQUEST OF THE 'INCUMBENT' GOVERNMENT

The British interventions in the Sultanate of Muscat and Oman (1957) and Jordan (1958), and the French interventions in Gabon (1964) and Chad (1968) represent most important cases of military intervention upon the request of the incumbent government in the face of an internal rebellion. In both Muscat-Oman and Jordan, there was an alleged foreign involvement in the internal disturbance.[11] Before the Council debate on whether it should place the British action in Muscat and Oman on its agenda, the Sultan of Muscat and Oman protested the Arab request for the consideration of the matter by the Council, by stating that the matter laid exclusively within his internal jurisdiction.[12] Although legitimacy of the request by the Sultan was questioned by the Arab states on the basis of the claim that Oman had got its independence by the Treaty of Sib in 1920, and thus was not under the Sultan of Muscat's jurisdiction; the British assertion that the Sib Agreement of 1920 had only allowed Oman a measure of autonomy but not recognized it independent, found support in the Council.[13] As a result, the Council declined the Arab request. In contrast to inaction with respect to Muscat and Oman, the United Nations considered the British intervention in Jordan both at the Council and the Assembly. During the Council debate, the Jordanian representative declared that facing a threat to its independence and integrity by subversive elements employed from outside, Jordan had asked the United Kingdom for aid. The consideration of the matter in both

[11] See Chapter I of Part II for the examination of these cases within the context of collective self-defense against subversive forces instigating domestic trouble.
[12] Cable of 17 August 1957 received by President of Security Council, UN Doc. S/3866 (1957).

organs mainly focused on whether such an alleged threat existed, rather than the validity of the Jordanian consent to the action.[14]

In the two cases of French interventions in Gabon (1964) and Chad (1968), France defended its action on the basis of the request issued from the respective governments under the provisions of defense agreements signed with these states in 1960.[15] Both Gabon and Chad declared that they had requested French aid in the face of an internal rebellion.[16] While the French operation in Gabon was approved by most of the African French speaking states, such as Madagascar, the Central African Republic, Chad, Niger, Upper Volta and the Ivory Coast, some African countries, notably Algeria, Mali and Ghana, strongly opposed it.[17] The intervention in Chad on the other hand, did not raise much international reaction. None of the interventions were considered at the UN. As such in cases where the 'legitimacy' of the government is not questioned, the United Nations did not challenge the governments' capacity to give 'consent.' Thus, its practice in this respect is in conformity with the traditional view that it is legal to assist the incumbent government facing internal disorders upon its request.

---

[13] The Philippines and Sweden raised their concern with the complicated legal questions in relation to the status of the Treaty of Sib, thus expressed their support for the inclusion the item on the Council's agenda. *UN Yearbook* (1957), 58.

[14] *UN Yearbook* (1958), 41-47.

[15] The treaties, which provided for continued defense collaboration with France, were signed with Chad on 12 July 1960 and with Gabon on 15 July 1960 on the occasion of granting independence to these countries. See, "Independence Agreements with Chad, Central African Republic, Congo and Gabon," *Keesing's Record of World Events* 6 (August 1960), http://www.keesings.com.

[16] A Gabonese government statement issued on 19 February 1964 maintained that the legal government of Gabon had requested assistance from France on the basis of the agreements between the two countries. "Abortive Military Coup – Intervention by French Forces," *Keesing's* 10 (April 1964). In a similar vein, a statement of Chadian Government in August 1968 declared that the territorial integrity of Chad was being threatened and that the President of the Republic of Chad appealed for French military assistance in accordance with the Franco-Chadian mutual defense pact of 1960. "French Military Assistance against Rebels," *Keesing's* 14 (December 1968).

[17] "Abortive Military Coup – Intervention by French Forces," *Keesing's* 10 (April 1964).

2. 2. MILITARY INTERVENTIONS AT THE REQUEST OF THE ENTITY REPRESENTING ONE OF THE PARTIES IN AN INTERNAL CONFLICT

These cases include where the inviting authority is largely associated with one of the parties in an internal conflict and lacks effective power over the whole territory in question. Among other reasons, the United States justified its intervention in Lebanon in 1958 on the ground that it was invited by the established government of Lebanon.[18] In the Security Council, the US action was largely approved; except the Soviet Union, emphasizing the absence of an external threat, strongly condemned the intervention and deemed it as aimed solely to maintain the Chamoun government in power.[19] The following General Assembly resolution called for strict observance of the principle of non-interference in internal affairs.[20]

The 1964 rescue operation in Congo by the Belgian paratroopers with the help of the United States[21] had been requested by the Tshombe government of Congo.[22] However, the fact that this government did not enjoy effective control over the area of operation became the major focus of criticism by the countries, which condemned the operation in the Council. The opposing countries questioned the legality of the

[18] Wright, "United States Intervention in the Lebanon," 112.
[19] *UN Yearbook* (1958), 39. In this connection, it has to be noted that the US State Secretary Dulles stated that the election of General Chehab, who had been supported by the rebels, in Lebanon some time after the US intervention, showed that the US action did not aim to help President Chamoun to be re-elected. See Wright, "United States Intervention in the Lebanon," 113.
[20] GA Res. 1237 (ES-III), 21 August 1958.
[21] For details of the internal situation of Congo at the time and the operation by the US and Belgium in Congo, see Richard Falk, *Legal Order in a Violent World* (Princeton: Princeton University Press, 1968), 324-335.
[22] The Democratic Republic of the Congo informed the Security Council that it had authorized the rescue operation. *UN Yearbook* (1964), 95.

Tshombe government and the validity of the invitation extended to Belgium.[23] On the other hand, supporting arguments stressed the legitimacy of the Leopoldville government, and thus underlined its capacity to issue an invitation to Belgium.[24] The Security Council adopted a mild resolution requesting states to refrain from intervention in the domestic affairs of the Congo.[25] Thus, neither the US intervention in Lebanon nor the US-Belgian intervention in Congo was condemned by the UN.

A complicated case with respect to 'request' is the 1976 Cuban intervention in Angola upon the consent of one of the three fighting factions, namely the MPLA (Popular Movement for the Liberation of Angola), which controlled only twenty per cent of the territory, before Angola had gained its independence.[26] During the Security Council's discussion, the MPLA representative maintained that it was Angola's right to appeal to assistance of any friendly country to counter the South African aggression and that any concern about this would be an unjustified interference in its internal affairs.[27] The problem in this case however arises from the fact that the Cuban intervention occurred before the declaration of independence of Angola.[28] Thus, the MPLA, not being the legitimate government, did not possess the

---

[23] Among the opposing countries were the African countries (Algeria, Burundi, the Congo (Brazzaville), Ghana, Guinea, Kenya, Mali, Sudan, the United Arab Republic and the United Republic of Tanzania), which regarded the intervention as an act of aggression and a conspiracy to impose upon the people of the Congo the disputed authority of the Tshombe government; and the USSR and Czechoslovakia, which endorsed the aforementioned accusations of the African countries. *UN Yearbook* (1964), 96-97. See also, "Communist and African Reactions to Stanleyville Operation," *Keesing's* 11 (February 1965).

[24] The countries supported included France, Brazil, China, Bolivia, Norway and Nigeria. On the other hand, while admitting the legality of the Leopoldville government, the Ivory Coast and the Central African Republic deplored the Stanleyville operation. *UN Yearbook* (1964), 98.

[25] SC Res. 199, 30 December 1964.

[26] For the details of the Angolan situation, see note 72 in Chapter I of Part II.

[27] *UN Yearbook* (1976), 173.

[28] In the Security Council, the Cuban representative stated that Cuba had sent the first military unit to Angola on 5 November 1975 at the request of MPLA. *UN Yearbook* (1976), 174. Two separate republics were proclaimed almost simultaneously by MPLA in Luanda, the capital (on 10 November 1975), and jointly by FNLA (National Front for the Liberation of Angola) and UNITA (National

legal right to seek assistance of any third state in self-defense against a foreign armed attack. Nevertheless, in the Security Council, many countries regarded the MPLA as the legitimate government and supported its right to seek help against the previous South African attack.[29] In a similar vein, the consequent Security Council resolution did not challenge the legal right of MPLA to ask help to counter South African intervention regardless of the fact that the Cuban intervention in fact took place before the MPLA proclaimed independence. On the contrary, the resolution did underline "the inherent and lawful right of every state, in the exercise of its sovereignty, to request assistance from any other state or group of states."[30]

Another complex case concerns the interventions in Chad, namely the 1978 and 1983 French interventions and 1980 Libyan intervention. The French intervention in 1978 was undertaken to support the government forces in their counter-offensive against the rebels on the basis of the request of the established government of Chad.[31] According to an *International Herald Tribune* article, at the time of the intervention, the government controlled barely a quarter of the country.[32] France repeatedly stressed that the continued French aid to Chad had been in response to that country's

---

Union for the Total Independence of Angola) in Huambo (on 11 November 1975). "Achievement of Independence – State of Virtual Civil War – International Involvement – Establishment of Separate Governments by MPLA and FNLA-UNITA - Unilateral Declaration of Independence by Cabinda," *Keesing's* 21 (December 1975). By the end of February 1976, the MPLA government was recognized by the OAU and many other states, including the Western states and Asian countries. See, "Recognition of MPLA Government by OAU and Other Countries," *Keesing's* 22 (April 1976).

[29] For example, the representative of Pakistan held that it was within Angola's sovereign rights to invite and retain foreign military forces that it considered friendly to its cause and whose assistance it felt needed. Similar arguments were put forward by the USSR, the Congo, Guinea-Bissau and Mali. *UN Yearbook* (1976), 175.

[30] SC Res. 387, 31 March 1976.

[31] The 1978 French intervention was also justified as protection of French citizens. This justification will be examined in the next part of the study within the context of "protection of nationals abroad." For details of the French involvement in Chad, see "Allegations of French Involvement," *Keesing's* 24 (May 1978).

[32] "Allegations of French Involvement," *Keesing's* 24 (May 1978).

"express and urgent request."[33] When a civil war broke out again in 1980, Libya intervened in Chad on the side of the coalition forces supporting President Oueddei.[34] Declining to expose the extent of Libyan connection, President Kadhafi of Libya described its involvement as being merely "technical and humanitarian aid" provided in response to a request by the Chad government.[35] By a letter to the President of the Security Council, Libya also argued that its military presence in Chad was at the request of the transitional government of Chad to help put an end to the civil war.[36] With regards to its intervention in Chad in 1983, once again France stated that it responded to Chad's request, as provided by the 1976 Cooperation Agreement between the two countries.[37] Neither the Security Council nor the General Assembly took any decisions regarding the interventions in Chad between 1978-1983. Nonetheless, the situation in Chad came before the Security Council in 1983, whereby the discussion mostly focused on the Libyan aggression on Chad, and a number of countries expressed support for the government of Chad and its request for the presence of French troops for its self-defense against the Libyan armed aggression.[38]

One of the most dubious cases regarding the legality of invitation is the alleged Afghan request for Soviet military intervention in 1979. In the Security Council, the

---

[33] "Resurgence of Rebel War – French Support for Chad National Army," *Keesing's* 25 (January 1979).
[34] For the detailed information on the outbreak of hostilities, see "Internal Security and Political Developments," *Keesing's* 26 (February 1980).
[35] "Large-scale Libyan Intervention," *Keesing's* 27 (February 1981).
[36] Letter of 24 November 1981 to the President of the Security Council by Libyan Arab Jamahiriya, UN. Doc. S/14767 (1981).
[37] *UN Yearbook* (1983), 185. For the French justifications, see also "French and Zairean Aid to Habre Government FANT Counter-Offensive," *Keesing's* 29 (December 1983).
[38] Libya's position was only supported by the USSR, whereas Egypt, France, Guinea, Guyana, the Ivory Coast, Kenya, Liberia, the Netherlands, the Niger, Pakistan, the United Republic of Cameroon,

representative of the Soviet Union claimed that the Soviet decision to send a "limited military contingent" to Afghanistan was taken in response to the repeated appeals of its government for support in order to repel armed intervention from outside and on the basis of provisions of mutual treaty obligations.[39] In a statement published in *Pravda* on 12 January 1980, President Brezhnev reiterated that the Soviet Union had responded to the request of Afghanistan in the face of external aggression and crude interference from outside in its internal affairs.[40] Nonetheless, the difficulty in assessing the legality of the invitation stems from the unclear circumstances in which the Afghan government consented to Soviet intervention. The statement of Democratic Republic of Afghanistan requesting "urgent political, moral and economic assistance, including military assistance" from Soviet Union pursuant to the 1978 Treaty of Friendship, Good-Neighbourliness and Cooperation[41] appeared in *Pravda* on 29 December 1979, two days after the overthrow of President Amin's regime.[42] On the other hand, the Soviet Union, in a massive airlift on 25-26 December 1979, had brought into Kabul an estimated 4000-5000 Soviet combat

---

the United Kingdom, the United States and Zaire expressed views in favor of Chad. See, *UN Yearbook* (1983), 184-187.

[39] *UN Yearbook* (1980), 297.

[40] "President Brezhnev's Statement on International Situation," *Keesing's* 26 (May 1980).

[41] Article 4 of the Treaty of Friendship, Good Neighbourliness and Cooperation signed between the Soviet Union and Afghanistan on 5 December 1978 provided for developing military cooperation in the interest of strengthening their defense capacity. Another article of that treaty provides for mutual consultation and appropriate action -presumably whatever the two parties agree to- in the event of a threat to the peace. See "Visit of President of Afghanistan to Soviet Union - Signing of Treaty of Friendship, Good-neighbourliness and Co-operation – Agreement on Establishment of Commission for Economic Co-operation," *Keesing's* 25 (February 1979); see also Seth Singleton, "The Soviet Invasion of Afghanistan," http://www.airpower.maxwell.af.mil/airchronicals/aureview/1981/mar-apr/singleton.htm.

[42] *Pravda*, 29 December 1979, http://www.cnn.com/SPECIALS/cold.war/episodes/20/1st.draft/pravda.html. It should be noted that, today, it has become known, even from the Soviet sources, that Babrak Karmal was not at the head of the government, but was on Soviet territory at the time of the purported request of assistance. See Mullerson, "Intervention by Invitation," 129.

troops and their equipment, and had already been present in Kabul since then.[43] Thus, ambiguity remained regarding the regime that issued invitation. However, one can presume from the considerable number of Soviet troops in Kabul before the fall of President Amin that the Soviets were there with his government's consent.[44] Notwithstanding, most statements at the Security Council and the General Assembly mainly questioned the alleged external threat to Afghanistan on which the Soviet Union based its justification of collective self-defense.[45] Nevertheless, a majority of states also expressed doubts about freedom exercised by Afghanistan in consenting the presence of Soviet troops, and regarded the Soviet action as interference in the domestic affairs of another country in violation of international law and against the principles of Charter. During the General Assembly discussions, for example, Singapore challenged the authority of Karmal for such a request, since, in July 1978, he had been dismissed from his post as Afghan Deputy Prime Minister. Similarly, Kuwait maintained that the request was invalid, for the Government of Afghanistan had been installed by the Soviet Union itself. Also Japan expressed parallel views.[46] Despite the relative concentration on the appeal to self-defense during the consideration of the matter at the United Nations, one can judge from the resultant Assembly resolution's call for the "immediate, unconditional and total withdrawal of foreign troops from Afghanistan in order to enable its people to determine their own form of government and choose their economic, political and social systems free

---

[43] "Airlift of Soviet Troops into Afghanistan – Overthrow of President Amin," *Keesing's* 26 (May 1980).

[44] In this respect, one author argues that "an explicit invitation is not a necessary condition in all cases," and that "the mere acceptance or acquiescence may be sufficient in some cases to indicate consent." John Lawrence Hargrove, "Intervention by Invitation and the Politics of the New World Order" in Damrosch and Scheffer (eds.), *Law and Force*, 117.

[45] See Chapter I of Part II for Soviet intervention in Afghanistan within the framework of "collective self-defense."

[46] *UN Yearbook* (1980), 300.

from outside interference,"[47] that the Assembly did not consider the Karmal government as representative of the will of the Afghan people, and thus implied the illegality of its request.

It appears from the above appraisal of the relevant cases that with the exception of the Afghanistan case whereby the exact circumstances in which the Afghan government was formed and consented to the Soviet intervention were highly doubtful, the general response of the UN was either one of inaction, as in the cases of Chad interventions, or confined to resolutions reiterating the principle of non-intervention in the internal affairs, rather than deploring the interventions, as in the cases of interventions in Lebanon and Congo. Given that the respective governments that issued requests of assistance lacked real power over the totality of their territories except Afghanistan, it can fairly be argued that the effectiveness of the governments has not been a criterion for questioning the validity of the 'request' in situations of internal turmoil and civil war. Thus, the absence of strong critical assessment of the validity of the consent in the UN organs and the relatively mild reaction to these cases may be said to stem from the fact that they were considered as 'lawful' governments of the countries in question. In fact, it was only in the case of Angola, where Portugal was formally in charge when the intervention had begun and thus the inviting entity was not representing the government, that the UN adopted a favorable resolution admitting the right of every state "to request assistance from any other state or group of states," and thus by implication accepting the legitimacy of the request. This reaction may be linked to the fact that the inviting entity ultimately proclaimed independence and was recognized by the international community. By

[47] GA Res. ES-6/2, 14 January 1980.

the same token, the UN condemnation of the intervention in Afghanistan can be explained by the general belief that the Afghan government was established by an outside force, i.e. the Soviet Union, against the will of the people, and thus in contravention to the principle of internal self-determination.

2. 3. MILITARY INTERVENTIONS UPON REQUEST TO "RESTORE ORDER" OR "DEFEND DEMOCRACY"

The cases belonging to this category are those interventions whereby the requesting entity neither wields effective power nor represents any faction in the internal conflict, and its legitimacy stems from the fact that it is either democratically elected or holding formal power. As a result, in such interventions, one of the main purported aims is to "reinstate order" or "restore democracy." The most illustrative case for assessing whether military intervention can be justified on the basis of a request from a democratically representative entity without real power is the United States and East Caribbean intervention in Grenada (1983). The United States' interventions in the Dominican Republic (1965) and Panama (1989) are also relevant albeit to a lesser extent, since 'invitation' was not a primary justification in these cases.

One of the reasons given by the United States for its intervention in the Dominican Republic was that it was invited to do so by the Dominican authorities. In the Security Council, the US representative asserted that the US action was undertaken due to the collapse of law and order in the Dominican Republic and with a request

for assistance from the "Dominican law enforcement and military officials" to protect the lives Americans and of other citizens of some 30 countries[48]. Although the group claiming to be the government of the Dominican Republic was a de facto government and did not enjoy broad control over the territory of the Dominican Republic,[49] criticisms in the Security Council mainly focused on the other US justifications, most notably on the protection of lives and safety of American citizens and other nationals, rather than the legitimacy of the regime and legality of the invitation.[50] States condemning the intervention laid emphasis on the principle of non-intervention.[51] It was only the British support for the "United States emergency action," that pointed to the aspect of 'request' in the US justifications, maintaining that the action was undertaken because "the only Dominican forces, which had any recognizable claim to be in position to maintain order declared their inability to do so" and "requested the United States to take steps to protect nationals whose lives were in danger." In that respect, the French representative, however, was of the opinion that the intervention seemed to have been undertaken "against those who claimed to have constitutional legality."[52] The Security Council resolutions adopted after the debates were nonetheless limited to the calls for cease-fire.[53]

The alleged legal grounds for the US and Caribbean states' intervention in Grenada paralleled to those presented in the Dominican case: consent of the target state,

---

[48] "Security Council Debates," *Keesing's* 11 (July 1965).
[49] For the political crisis in the Dominican Republic between 1961 and 1965 leading to the formation of the military junta government on 28 April 1965 supported by the US, see Max Hilaire, *International Law and the United States Military Intervention in the Western Hemisphere* (The Hague: Kluwer Law International, 1997), 55-56.
[50] See the part on "protection of nationals" in Chapter I of Part III.
[51] *UN Yearbook* (1965), 140-145.
[52] "Security Council Debates," *Keesing's* 11 (July 1965).
[53] SC Res. 203, 14 May 1965 and SC Res. 205, 22 May 1965.

protection of nationals and regional peacekeeping action.[54] Nevertheless, the justification based on consent was more emphasized in the Grenada case, for at the time of intervention, as opposed to the Dominican internal situation of full-scale conflict, there was only a general internal unrest in Grenada, which did not appear to put an imminent danger to the lives of US nationals there.[55] Although the Governor-General of Grenada later confirmed his request of assistance but only after the US forces were in full control of the situation,[56] both the constitutional authority of the Governor-General and the scope of the invitation were subject to strong criticism. To begin with, it appeared that the OECS's decision to intervene was taken in the absence of the Governor-General.[57] Secondly, the legal authority of the Governor-General to invite foreign troops represented another matter of controversy, since under the constitution of Grenada, his office was merely ceremonial and advisory, and thus he would not have the constitutional authority to authorize an intervention at a time when the existing government was still in control of the country.[58] In this respect, some statements are indicative of the fact that the authority of Governor-General to request assistance was indeed questioned in the United Nations even by close US allies. For example, deploring the intervention, France pointed out that

---

[54] For an extensive treatment of the US and OECS justifications, see Scott Davidson, *Grenada: A Study in Politics and the Limits of International Law* (Aldershot, England: Avebury, 1987), 79-137.

[55] For the situation in Grenada after the coup, see "Removal of Mr.Bishop – Establishment of Revolutionary Military Council – Reactions from other Caribbean States," *Keesing's* 30 (January 1984).

[56] Statement by Governor-General, reprinted in *Department of State Bulletin* 83 (1983), 75. It is noteworthy that Sir Paul Scoon (Governor-General) did not sign the formal invitation to the US until 27 October 1983. In a subsequent interview on 31 October 1983, he said that he had asked "not for invasion but help from outside." He also maintained that he decided to seek outside assistance on the 23 October 1983, two days after the OECS decision to intervene. See "Controversy over Nature and Timing of Requests by Caribbean Leaders and Governor-General for Intervention," *Keesing's* 30 (January 1984).

[57] The Caribbean states took the decision to take action at an emergency session of the OECS on 21 October 1965, without the consent of the Governor. See "Controversy over Nature and Timing of Requests by Caribbean Leaders and Governor-General for Intervention," *Keesing's* 30 (January 1984).

[58] Hilaire, *International Law and the United States,* 88.

international law and the UN Charter authorized intervention only in response to a request from the legitimate authorities of a country, or upon a decision of the Security Council.[59] Also, British government stated that it regarded the US action as clearly illegal because "the invitation had come from those not entitled to make such a request on behalf of Grenada."[60] On the other hand, the fact that a number of states also underlined that the armed intervention had denied the people of Grenada the right to self-determination, demonstrates that the Governor-General was not accepted as representative of the will of the Grenadians.[61] As to the US argument of restoration of peace and order, the Polish representative, for example, characterizing the US action as aggression, expressed his government's regret that the US had presented "violation of basic norms of international law and the Charter of the United Nations" as "restoration of peace and order."[62] However, as mentioned in the previous analysis of Grenada case within the context of collective self-defense, the overwhelming condemnation could not be translated to a corresponding Council resolution, which would have deplored the intervention as violation of international law and the independence of Grenada due to the US veto.[63] Nonetheless, a General Assembly resolution of a similar character was adopted.[64] As in the Security Council, the norms referred to by the majority of states condemning the intervention in the Assembly debate were prohibition of the use of force, prohibition of any act of

[59] *UN Yearbook* (1983), 212.
[60] Quoted in Oscar Schachter, *International Law in Theory and Practice* (Dordrecht, The Netherlands: Martinus Nijhoff Publishers, 1991), 132.
[61] Among those were Yugoslavia, Guatemala, Venezuela, *UN Yearbook* (1983), 211-213.
[62] UN Doc. S/PV.2489 (1983), 21.
[63] Draft resolution sponsored by Guyana, Nigaragua and Zimbabwe, S/16077.Rev.1 (1983). Failed by 11 votes in favor, 1 against (United States) with 3 abstentions (Togo, United Kingdom, Zaire).
[64] GA Res. 38/7, 31 October 1983.

aggression, the rule of non-intervention and the rule of non-interference in the internal affairs of states so as to deprive peoples of their right to self-determination.[65]

The case of Panama differs from the above cases with the absence of an internal conflict at the time of the intervention, but relevant to the extent that the United States also claimed, among others,[66] to have been invited to restore democracy by the democratic government that had sworn at a US base some thirty minutes before the intervention began.[67] Explaining the purpose of the action in the Security Council, the US representative stated that there had been consultations with the "democratically elected leadership" in Panama before the action, and that these leaders had endorsed the 'steps' decided by the US.[68] The Panama intervention was condemned by the Soviet Union as a "flagrant violation of the fundamental principles of the UN Charter and the norms of relations between states." The intervention was also condemned by a large majority of the Latin American states.[69] Among the European Community countries, only Britain publicly lent "full support" to the US action.[70] In the Security Council, France and Canada voted against the resolution condemning the US intervention as well.[71] A similar resolution was,

---

[65] *UN Yearbook* (1983), 214-216.

[66] Other US justifications included protection of the US citizens, defending the integrity of the Panama Canal Treaty, stop drug trafficking and bringing Noriega to justice on drug charges. "US Justification for Intervention," *Keesing's* 35 (December 1989).

[67] For the details of the reinstatement of Guillermo Endara, who was widely held to have won the May 1989 presidential elections, whose results were annulled by General Manuel Noriega, the Panamanian dictator, see "US Invasion and Installation of Endara Government" and "Inauguration of President Endara – Confirmation of Election Results," *Keesing's* 35 (December 1989).

[68] UN Doc. S/PV.2899 (1989), 31-37. *UN Yearbook* (1989), 174.

[69] The Organization of American States on 22 December 1989 "deeply deplored" the military action and urged the immediate cessation of hostilities and the commencement of negotiations, in a resolution opposed only by the United States, with 20 voting in favor and 6 abstaining (Costa Rica, Honduras, Guatemala, Venezuela, El Salvador, and Antigua and Barbuda. See "International Reactions to Invasion," *Keesing's* 35 (December 1989).

[70] "International Reactions to Invasion," *Keesing's* 35 (December 1989).

[71] Draft resolution submitted by Algeria, Colombia, Ethiopia, Malaysia, Nepal, Senegal and Yugoslavia, failed to be adopted by 10 (joining the sponsoring countries were Brazil, China and

however, adopted by the General Assembly. Recalling Article 2(4) and the right of a state to determine freely its social, economic and political system and to conduct its foreign relations without any form of foreign intervention and interference, the resolution strongly deplored the intervention in Panama.[72] During the Assembly debate, although the US justifications were generally rejected, many speakers, particularly from the Western countries conveyed approval of the reinstatement of democracy in Panama.[73]

Common to all these cases of military intervention is the alleged aim of restoring order or democracy, among others. In this respect, in all the interventions above, the United States seems to have based its claims on a broad interpretation of Article 2(4), as reflected by the statement of the US representative, Ambassador Kirkpatrick, during the Grenada intervention, who at the time argued that "the prohibitions against the use of force in the UN Charter are contextual and not absolute," and that the language "or in any manner inconsistent with the purposes of the United Nations" in Article 2(4) provides "ample justification for the use of force in pursuit of other values also inscribed in the Charter –freedom, democracy, peace."[74] In this respect, one prominent legal scholar argues that Article 2(4) cannot be expansively interpreted so as to legalize toppling a repressive regime.[75] Moreover, neither Article 51 nor the General Assembly Resolutions on *Principles of International Law* (2625),

---

USSR) to 4 (Canada, France, United Kingdom, United States) with 1 abstention (Finland), UN Doc. S/21048 (1989).

[72] GA Res. 44/240, 29 December 1989. The resolution passed with 75 votes in favor and 20 against with 40 abstentions. Among the countries voting against were mostly the Western states, but also Dominica, El Salvador, Israel, Turkey and Japan. Abstaining countries were mainly the African states.

[73] UNPR GA/7976, 29 December 1989, 11-15.

[74] UN Doc. S/PV.2491 (1983), 31.

[75] Oscar Schachter, "The Legality of Pro-Democratic Invasion," *American Journal of International Law* 78:3 (1984), 649.

the *Definition of Aggression* (3314), or the *Inadmissibility of Intervention* (2131) provide a legal basis to intervene to maintain or restore democracy. The UN reactions to the above interventions consistently correspond to the norms laid down in these documents, and demonstrate that enforcing universal values as such is not perceived as superseding the right of every people freely to choose their own form of government without outside interference.[76] Moreover, there is a general agreement among the legal scholars that there is no legal basis for replacing any regime with democracy. For example, commenting on the US invasion of Panama, Farer maintains that since the central structural principle of the postwar international legal system is the "equal sovereignty for all nation-states,"

> "one state cannot compromise another state's territorial integrity or dictate the character or the occupants of its governing institutions. If the law allows any exception to this constraint on state behavior, surely it is only where the exception is required to preserve the rule. In other words, consistent with the structural principle, one state may manipulate the politics of another only where the latter's behavior or internal condition leaves the former with no alternative means for defending its own political independence and territorial integrity."[77]

As a result, it can be said that even when the issue is the enforcement of generally accepted virtuous values like peace, order and democracy, the legal capacity of the inviting entity is profoundly questioned.

---

[76] Intervention to assist peoples struggling for self-determination constitutes one other justification for military intervention, which will be taken up in Chapter I of Part III.

[77] Tom J. Farer, "Panama: Beyond The Charter Paradigm," *American Journal of International Law* 84:2 (1990), 507-508. For a similar view, see for example, Ved P. Nanda, "The Validity of United States Intervention in Panama Under International Law," *American Journal of International Law* 84:2 (1990), 498. For an opposite view that action against tyranny does not violate Article 2(4), see

2. 4. OTHER CASES OF MILITARY INTERVENTIONS BY INVITATION OR PURSUANT TO A PRIOR TREATY

In the cases explored thus far, the question with respect to the invitation was by and large related to the legal capacity of the authority concerned in relation to the internal situation. However, there are two other cases, whereby the consent of the target state was claimed, that do not fall into any of the above categorization. These include the Soviet interventions in Hungary (1956) and in Czechoslovakia (1968),[78] both of which were provoked, as well-known, by the reform programs that the leadership of the Communist Party, led by Imre Nagy and Alexander Dubcek respectively, had embarked upon.[79] The difference from the other cases examined above is that in Hungary and Czechoslovakia, the authority of the respective governments was not disputed internally at the time of intervention. Although there was a state of internal unrest in Hungary, it was about to settle as a result of the change in the government policy along the lines of the people's demands.[80] Moreover, both governments clearly expressed that they had not issued any kind of invitation to the Soviets (or other Warsaw Pact troops).[81] Thus, in both cases, the entity that asked for invitation

---

Anthony D'Amato, "The Invasion of Panama Was a Lawful Response to Tyranny," *American Journal of International Law* 84:2 (1990), 516-524.

[78] For the Soviet claim of consent of the government in its intervention in Hungary see *UN Yearbook* (1956), 68; and in Czechoslovakia, see *UN Yearbook* (1968), 298.

[79] For the account of events in Hungary and Czechoslovakia, see Peter Calvocoressi, *World Politics Since 1945* (New York: Longman, 1996), 294-300.

[80] At the beginning of 1956, there was growing discontent with the political leadership in Hungary, which led to student demonstrations demanding democratization of the party and the withdrawal of Hungary from the Warsaw Pact. On 1 November 1956, Imre Nagy, who was reinstated as Prime Minister on 24 October, demanded the withdrawal of Soviet troops stationed in Hungary under the Warsaw Pact of 1955, informed Hungarian withdrawal of the Warsaw Pact, declared Hungarian neutrality and requested the Secretary-General of the UN to put the latter issue on the agenda of the General Assembly. See Cablegram of 1 November 1956 to Secretary General from President of Council of Ministers of Hungary, the UN Doc. A/3251 (1956).

[81] As to the Hungarian case, Imre Nagy stated on 30 October that he had not signed the appeal to Soviet forces requesting aid. See Quincy Wright, "Intervention, 1956," *American Journal of International Law* 51:2 (April 1957), 259. Also, on 1 November 1956, the Hungarian President of

was not the established government. Instead, the invitation was issued *ex post facto* by the authority installed as a result of the intervention.[82] Therefore, the relevant question in these cases was not so much of assessing the legal capacity of the entity requesting the intervention, since it was considered unlawful from the outset.[83] Consequently, the condemnation at the UN centered on the violation of the right of self-determination of the Hungarian and Czechoslovak peoples.[84] The General Assembly resolutions in relation to Hungary reflects such emphasis by considering the Soviet intervention as an attempt "to deny to the Hungarian people the right to a

---

Council of Ministers of Hungary informed the Secretary-General that further Soviet units were entering Hungary. In his capacity as Minister of Foreign Affairs, he expressed his strongest protest to the Soviet Ambassador and demanded the instant withdrawal of Soviet forces. See Cablegram of 1 November 1956 to Secretary General from President of Council of Ministers of Hungary, UN Doc. A/3251 (1956). With regards to Czechoslovak case, in the statement of Presidium of Czechoslovak Communist Party broadcasted by the Prague radio on 21 August 1968, it was declared that the entry of Soviet and Warsaw Pact countries' troops in Czechoslovakia had happened without the knowledge of the President of the Republic, the Chairman of the National Assembly, the Premier, or the First Secretary of the Czechoslovak Communist Party. The same statement declared the invasion to be an act contrary to the principles of international law. Later on the same day, the Czechoslovak National Assembly expressed support for the aforementioned declaration. Protesting against the occupation of Czechoslovakia, the National Assembly statement also considered it a violation of international law, of the provisions of the Warsaw Treaty, and of the principles of equal relations among nations. See "The Soviet Invasion," *Keesing's* 14 (September 1968). See also the statement of Czech representative at the Security Council on 21 August 1968 reiterating that the Soviet and Warsaw Pact troops had entered Czechoslovakia without the knowledge or consent of the leaders of Czechoslovakia, and that the occupation was illegal and contrary to international law, *UN Yearbook* (1968), 299, 303.

[82] The invasion of Soviet troops began in Hungary on the morning of 4 November 1956. In the evening of the same day, it was announced that the Nagy government had collapsed and a government under Janos Kadar had been established, which issued a request of aid of Soviet troops to restore order. Wright, "Intervention, 1956," 260. In the Czehoslovak case, a *Tass* statement on 21 August 1968 alleged that the "fraternal assistance" to Czehoslovakia had been requested by a "group of members of the Central Committee of the Communist Party of Czechoslovakia, the government, and the National Assembly of the Czechoslovak Socialist Republic." On the next day, *Tass* published this purported appeal. However, there was no mention of specific names who had asked for this alleged 'assistance.' See "The Soviet Invasion," *Keesing's* 14 (September 1968).

[83] For example, in the discussions of question of Hungary in the Security Council, the representatives of the United Kingdom and France as well as other Council members voiced doubts about the existence of any invitation. *UN* Yearbook (1956), 67-68. And during the Council consideration of the Czechoslovak issue, the representatives of Brazil, Canada, China, Denmark, Ethiopia, France United Kingdom, United States maintained that the claim of the Czech request was not convincingly documented. *UN Yearbook* (1968), 300.

[84] For the views expressed regarding the intervention in Hungary during the consideration of the matter by the Security Council and by the General Assembly at its second emergency special session, see *UN Yearbook* (1956), 67-72. For the views expressed regarding the intervention in Czechoslovakia during the consideration of the matter by the Security Council, see *UN Yearbook* (1968), 298-303.

government freely elected and representing their national aspirations,"[85] and by condemning the Soviet Union for "depriving Hungary of its liberty and independence and the Hungarian people of the exercise of their fundamental rights" in the violation of the Charter.[86] Similarly, the failed draft resolution, which would have condemned the Soviet intervention in Czechoslovakia, made reference to the right of Czechoslovak people to freely "exercise their own self-determination and to arrange their own affairs without external intervention."[87]

In the interventions in Hungary and Czechoslovakia, the Soviet Union, as mentioned before, invoked the right of collective self-defense in accordance with the Warsaw Pact Treaty. Among other cases considered above, there are also those whereby the intervening power claimed to have responded to a request made in accordance with a bilateral treaty that generally provided for mutual assistance in case of an external threat.[88] Yet, in all these cases, an *ad hoc* consent of the target state, however dubious, was presented as justification, along with or without the treaty obligations. Accordingly, the crucial question, as explored above, revolved around the competence of the "inviting authority." As a result, it will not be wrong to argue that the legality of the "consent in advance" derived from a prior treaty seems to have been subordinated to the legality of the invitation in the UN reactions to cases where obligations arising out of a contractual arrangement were raised. However, there is one special case of armed intervention, which departs from the above instances due

[85] GA Res. 1005 (ES-II), 9 November 1956.
[86] GA Res. 1131, 12 December 1956.
[87] Draft resolution introduced by Brazil, Canada, Denmark, France, Paraguay, Senegal, United Kingdom, United States. UN Doc. S/8761 and Add. 1 (1968).
[88] Such agreements were invoked in the cases of the 1983 French intervention in Chad and the Soviet intervention in Afghanistan. Although 1960 agreements of France with Chad and Gabon accorded the

to the nature of the contractual engagement appealed for the intervention as well as the absence of the consent of the government, and that is the case of Turkish intervention in Cyprus in 1974.[89]

Turkey intervened in Cyprus by virtue of the Treaty of Guarantee (1960), which in its Article IV empowers the guaranteeing powers to take necessary measures to ensure the observance of the Treaty.[90] Turkey specifically justified its action as a peace operation and as fulfillment of its legal responsibility as a co-guarantor of the independence and constitutional order of Cyprus.[91] However, it is distinguished from all the cases explored so far, with the absence of any kind of express request or permission by any party to the conflict, let alone the recognized government of Cyprus. Thus, in contrast to the cases examined, the Turkish intervention was not undertaken upon a request of the existing government or any other entity for that matter. Nonetheless, in the aftermath of the intervention on 20 June 1974 and during the Geneva peace talks between Turkey and Greece following the intervention, Turkey was not condemned by any state as such in the Security Council.[92] In fact, some of the countries conveyed their understanding and criticized Greece for having

---

right of intervention to France in these countries, France did not rely on the terms of these agreements in its interventions, but instead justified them on the express request of the respective governments.

[89] For the events leading to the Turkish intervention and a detailed exploration of the legal status of the Republic of Cyprus as foreseen by the founding treaties, see Sevin Toluner, *Kıbrıs Uyuşmazlığı ve Milletlerarası Hukuk (The Cyprus Conflict and International Law)* (İstanbul: Fakülteler Matbaası, 1977).

[90] Article IV of the Treaty of Guarantee reads as follows: "In the event of a breach of the present treaty, Greece, Turkey and the United Kingdom undertake to consult together with respect to the representations or measures necessary to ensure observance of those provisions. In so far as common or concerted action may not prove possible, each of the three guaranteeing Powers reserves the right to take action with the sole aim of re-establishing the state of affairs created by the present Treaty." Treaty of Guarantee, signed at Nicosia on 16 August 1960, in Toluner, *Kıbrıs Uyuşmazlığı ve Milletlerarası Hukuk*, 523-525.

[91] *UN Yearbook* (1974), 266.

[92] For the views expressed during the Council debate on the matter between 19-20 July 1974, see *UN Yearbook* (1974), 263-266.

provoked the crisis by involving in the coup staged by Nicos Sampson in violation of the founding treaties of Cyprus.[93] However, the second Turkish operation, which was carried out on 14 August 1974, was generally disapproved. The Security Council resolutions adopted after each operation reflect the change in the attitude. While the first resolution adopted on the day of the first operation, demanded "an immediate end to foreign military intervention" in breach of the sovereignty, independence and territorial integrity of Cyprus,[94] the resolution passed following the second Turkish operation recorded its "formal disapproval of the unilateral military actions undertaken against the Republic of Cyprus," and considered the situation as one constituting "a serious threat to peace and security in the Eastern Mediterranean region."[95] The General Assembly resolution on the matter was along the same lines and revealed a general disapproval of the action by calling upon "all states to respect the sovereignty, independence, territorial integrity" of the Republic of Cyprus and "refrain from all acts of interventions directed against it."[96] Although by the same resolution the Assembly also urged the "withdrawal of all foreign armed forces" and "the cessation of all foreign interference" in the affairs of Republic of Cyprus, like the Council resolution, it did not condemn the Turkey by name.

One significant question that arises out of the Turkish intervention is whether contractual agreements that allow for the use of force are lawful. In classical international law, it was recognized that a treaty could confer a state a right of

[93] Among those countries were the United States and the Soviet Union. *UN Yearbook* (1974), 266.
[94] SC Res. 353, 20 July 1974, adopted by 15 to 0.
[95] SC Res. 360, 16 August 1974, adopted by 11 votes to 0, with 3 abstentions (Byelorussian SSR, Iraq and the USSR). China did not participate in the voting.
[96] GA Res. 3212 (XXIX), 1 November 1974.

intervention by force on the territory of another state.[97] However, since the principle of the prohibition of the use of force is admitted to be a *jus cogens* norm, some scholars argue that the treaties providing the use of force in contravention to this peremptory norm including the treaties, which guarantee the status of a particular state or its form of government, are void.[98] Nonetheless, the opposing arguments to the Turkish intervention in Cyprus generally focused on the rule of non-intervention in the internal affairs and largely disregarded the discussion of whether Turkey could appeal to the Treaty of Guarantee as a justification.[99] Insofar as the Turkish intervention represents the only example of military intervention that is justified as pursuant to a prior treaty but against the will of the entity recognized as the legitimate government, and to the extent that it was essentially criticized in the UN organs as a violation of the principle of non-intervention in the internal affairs in general rather than on the basis of the invalidity of its claims arising out of the treaty

---

[97] Hersch Lauterpacht (ed.), *L. Oppenheim, International Law: A Treatise, Vol. I – Peace* (London: Longmans, Green & Co., 1955), 307. Among the examples of such treaties are 1863 Treaty of London between Great Britain, France and Russia, 1903 Treaty of Havana between the United States and Cuba, Treaty of 1903 between the United States and Panama, 1936 Treaty of Friendship and Cooperation between the United States and Panama and 1954 Treaty between Egypt and the United Kingdom regarding the Suez Canal. For the interventions undertaken on the basis of these treaties, see Brownlie, *International Law*, 318-320.

[98] Brownlie, *International Law*, 320.

[99] The view that the Treaty of Guarantee is void by its very nature was put forward by the Greek Cypriots and Greece after the warning flights of the Turkish military jets in the airspace of Cyprus on 25 December 1963, on 27 December 1963 during the consideration of the matter in the Security Council; and has been argued since then. For a detailed legal analysis of the validity of the argument, see Toluner, *Kıbrıs Uyuşmazlığı ve Milletlerarası Hukuk*, 135-139. It should be noted that the United States brought up a similar argument regarding the 1978 Treaty of Friendship, Good Neighbourliness and Cooperation between the USSR and Afghanistan by stating that if the treaty in question lent support for the Soviet intervention in Afghanistan, then "it would be void under contemporary principles of international law, since it would conflict with what the Vienna Convention of the Law of the Treaties describes as a "peremptory norm of general international law" (Article 53), namely, that contained in Article 2(4) of the Charter." The 1979 Memorandum of the Legal Adviser of the US Department of State, quoted in Cassese, *International Law in a Divided World*, 142. However, it is also noteworthy that against the Greek Cypriot and the Greek arguments to the same effect in the Security Council on 18 February 1964, the US stressed that the Council could not abrogate, nullify or modify, either in fact or effect, the Treaty of Guarantee or any international treaty. *UN Yearbook* (1964), 153.

of guarantee in concern, it is not possible to reach a conclusive assessment regarding the UN's judgment of the validity of such treaties *ipso jure*.

Certain conclusions regarding the United Nations' judgment of the element of 'consent' as a justification for military interventions can be put forward from the above analysis of the cases. First, it can be safely argued that the UN admits the right of states to consent to the use of foreign armed force within their territory. This is evident both in the discussions of specific cases and in the UN resolutions. During the Council and Assembly debates, none of the countries, including the opposing ones to the intervention in question, disputed the right itself. Similarly, none of the UN resolutions adopted in relation to the interventions considered here challenged the admissibility of the right of a state to request assistance. On the other hand, a derivative assessment is that the UN considers 'consent' as a valid justification for the use of force. In this respect, it can be said that the UN response has been consistent with the rule regarding 'consent' in general international law, that is military assistance rendered by one state to another at the latter's request is lawful. Secondly, regarding the question of whether the authority delivering the request is legally entitled to do so, it appears that the United Nations has not judged the legitimacy of the government strictly in terms of its exercise of real power over the totality of the territory in question. Thus, as long as the entity issuing the invitation was the established government regardless of its nature, its effective power and its association with any of the parties in the internal conflict, the UN generally did not question the validity of consent. In contrast, in cases where the constitutional authority of the inviting entity was disputed, the UN approach was highly critical, as in the cases of the Dominican Republic and Grenada. Thirdly, the UN response was

one of strong condemnation with emphasis on the right of self-determination only when there existed serious doubts about the character of the consent, i.e. whether it was freely and genuinely given, as in the cases of Panama, Hungary, Czechoslovakia and Afghanistan. Finally, the UN response does not lend to a definitive conclusion regarding the permissibility of military intervention based on treaty of guarantees and against the will of the state, for it has not been raised as an issue of objection in its resolutions concerning the only relevant example, i.e. the Turkish intervention in Cyprus.

PART III

OTHER FREQUENTLY RAISED JUSTIFICATIONS FOR MILITARY INTERVENTION

States have also invoked justifications for military intervention in internal affairs other than the exceptions contained in the rule of non-intervention. These are generally assistance to peoples in their struggle for self-determination, protection of nationals abroad and prevention of violations of human rights. The following chapters examine the admissibility and scope of these justifications.

CHAPTER I:

SELF DETERMINATION AND PROTECTION OF NATIONALS

This chapter will examine the admissibility of the first two of the above-mentioned additional state justifications, namely assisting self-determination and protection of nationals abroad, by analyzing the cases where they were invoked as legal grounds for military intervention and the UN reactions to them. For the purpose of exploring the UN's approach to the permissibility of these justifications, the chapter will first attempt to discern their status within the domain of general international law and in relation to the UN Charter and other UN documents, such as declaratory General Assembly resolutions. In this framework, it will then look at the relevant state practice and assess UN responses to individual cases.

1. 1. MILITARY INTERVENTIONS TO ASSIST SELF-DETERMINATION

The principle of self-determination may become pertinent to military intervention in internal affairs mainly in two ways: when a foreign power provides military assistance to a government, which does not represent the will of indigenous people, or alternatively, when a foreign power provides military assistance to peoples

entitled to self-determination. The former situation concerns 'internal' self-determination, and was indirectly examined within the context of the question of 'consent' of the target state in Chapter II of Part II. In this respect, it was observed that the UN reaction has been overwhelmingly negative, when there exists a strong belief that the government in question was unpopular or imposed by the intervening foreign power.[1] The following overview attempts to analyze the other side of the coin, namely justification of military intervention on the basis of assistance to peoples in their struggle for 'external' self-determination.

1. 1. 1. The Right of Self-Determination Under the UN Charter and in the General Assembly Resolutions

1. 1. 1. 1. The Use of Force by the Oppressive State

Several international documents defined self-determination as a right belonging to every people and articulated its exercise as the duty of every state vis-a-vis peoples and international community to ensure it.[2] In practice, this description implies that when a people engages in a struggle for self-determination, the state concerned does

---

[1] See for example, UN reactions to the Soviet interventions in Afghanistan, Hungary and Czechoslovakia in Chapter II of Part II.

[2] See for example, GA Res. 1514 (XV), *Declaration on the Granting of Independence to Colonial Countries and Peoples*, 14 December 1960, paras. 4 and 5; *International Covenant on Civil and Political Rights*, 16 December 1966, Articles 1(2) and 1(3); *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, Article 1; GA Res. 2625 (XXV), *Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States*, principle (e), 24 October 1970; Helsinki Final Act, 1 August 1975. For a concise discussion of the historical background and evolution of the right of self-determination, see Richard A. Falk, "The Right of Self-Determination Under International Law: The Coherence of Doctrine Versus the Incoherence of Experience" in Wofgang Danspeckgruber and Arthur Watts (eds.), *Self-Determination and Self-Administration: A Sourcebook* (Boulder: Lynne Rienner Publishers, Inc., 1997), 50-55; James C. Hsiung, *Anarchy and Order: The Interplay of Politics and Law in International Relations* (Boulder: Lynne Rienner Publishers, Inc., 1997), 130-132.

not have a right to impede the process, in any way including employing force.[3] In this context, it has to be recalled that the general ban on the use of force by states "in their international relations" laid down in Article 2(4) of the UN Charter does not extent to the use of force employed by any given state to suppress a riot, for under general international law, civil wars are in principle internal matters outside the confines of international law.[4] However, with the growing recognition of the rule of self-determination since the 1950s, it has come to be accepted that, "the relations between a colonial power and the colonial people have no longer been regarded as internal or municipal, but are seen as coming within the purview of international relations proper."[5] As a result, some scholars argue that the use of force by an oppressive power falls within the prohibition laid down in Article 2(4).[6] In addition, such instances of forcible action can also be characterized as military force used in a "manner inconsistent with the purposes of the United Nations",[7] namely "self-determination of peoples" as laid down in Article 1(2). In this respect, the General Assembly *Declaration on the Granting of Independence to Colonial Countries and Peoples* of 1960 states that:

> "All armed action or repressive measures of all kinds directed against dependent peoples shall cease in order to enable them

---

[3] Antonio Tanca, *Foreign Armed Intervention in Internal Conflict* (The Netherlands: Martinus Nijhoff Publishers, 1993), 103; Ali L. Karaosmanoğlu, *İç Çatışmaların Çözümü ve Uluslararası Örgütler (The Resolution of Internal Conflicts and the International Organizations)* (İstanbul: Boğaziçi Üniversitesi, 1981), 155; and Michael Akehurst, *A Modern Introduction to International Law* (London: George Allen and Unwin, 1984), 257.

[4] For the details of international law of civil war, see the section "The Frame of International Relations" in Chapter II of Part I.

[5] Antonio Cassese, *Self-Determination of Peoples, A Legal Reappraisal* (Cambridge: Cambridge University Press, 1995), 196. See also, Malcolm N. Shaw, *International Law* (Cambridge: Grotius Publications Limited, 1991), 701; and Karaosmanoğlu, *İç Çatışmaların Çözümü ve Uluslararası Örgütler*, 153.

[6] See for example, Cassese, *Self-Determination of Peoples*, 196.

[7] Article 2(4) of the UN Charter.

> to exercise peacefully and freely their right to complete independence."[8]

In a similar vein, the *Declaration on Principles of International Law* affirms that states are under a duty not to suppress revolutions for self-determination, freedom and independence, and the use of force as such is a breach of international law:

> "Every State has the duty to refrain from any forcible action which deprives peoples referred to in the elaboration of the principle of equal rights and self-determination and freedom and independence."[9]

Further, this clause is somewhat strengthened by a provision in the Declaration's section on non-intervention:

> "The use of force to deprive peoples of their national identity constitutes a violation of their inalienable rights and of the principle of non-intervention."[10]

Finally, paragraph 6 of the *Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States* also underlines that "all states shall respect the right of self-determination of peoples to be freely exercised without any foreign pressure."[11]

1. 1. 1. 2. The Use of Force by the Oppressed People

Article 2(4) does not extend to the use of force by the peoples or liberation movements for the realization of self-determination, since the prohibition laid down in Article 2(4) applies only to the states. During 1950s and 1960s, a number of developing countries together with the socialist states put forward the argument that resort to armed force by dependent peoples in their liberation movements from

---

[8] GA Res. 1514 (XV), 14 December 1960. The Declaration passed by 89 affirmative votes to 0 with 9 abstentions, which comprised colonial powers such as South Africa, Australia, Belgium, France, Spain, Portugal, Great Britain, the United States and the Dominican Republic.
[9] GA Res. 2625 (XXV), 24 October 1970.
[10] *Ibid.*

colonial powers constituted a form of self-defense against armed aggression, and as such, was authorized by Article 51 of the UN Charter.[12] For example, during the sessions of the UN Special Committee on Principles of International Law Concerning Friendly Relations and Cooperation Among States in 1964, while Czechoslovakia proposed to modify the Charter's prohibition of the threat or use of force in international relations by incorporating "self-defense of nations against colonial domination in exercise of the right of self-determination" to the exceptions of that prohibition,[13] Yugoslavia, India and Ghana proposed the idea that:

> "The prohibition of the use of force shall not affect ... the right of peoples to self-defense against colonial domination in the exercise of their right to self-determination."[14]

However, this political proposition did not find support from the majority of the member states of the United Nations, particularly from the Western states and a number of Latin American states.[15] Further proposals to the effect that the exercise of self-determination be regarded as part of the inherent right of self-defense and thus entailed a right to seek assistance from other states were submitted to the Committee during 1966 and 1967.[16] Opponents argued that "the assertion of a right of self-defense in the context of a principle of equal rights and self-determination" could provide a ground "for the intervention of a state in the affairs of another" and would contravene the duty of non-intervention in matters within the domestic jurisdiction of any state. In addition, it was asserted that under the Charter

---

[11] GA Res. 2131 (XX), 21 December 1965.
[12] Stephen M. Schwebel, "Wars of Liberation as Fought in the UN Organs" in John Norton Moore (ed.), *Law and Civil War in the Modern World* (Baltimore: The Johns Hopkins University Press, 1974), 446-457.
[13] *Report of the Special Committee on Principles of International Law Concerning Friendly Relations and Co-operation among States*, UN. Doc. A/5746 (1964), 20.
[14] *Ibid.*, 23.
[15] *Ibid.*, 42-45.

provisions, the right of self-defense was only accorded to sovereign states, not to peoples, and broad interpretations of the concept would serve to disturb international peace.[17] As a result, neither the *Declaration on Principles of International Law* nor the *Definition of Aggression* defined colonialism as 'aggression' and placed the right to self-determination within the framework of self-defense.[18]

Despite the fact that the UN Charter neither confirms nor bans the right of rebellion by dependent peoples or by liberation movements for the attainment of self-determination, the view that grew over the years, has come to allow resort to force by such movements on the condition that self-determination is forcibly denied by armed forces or coercive measures by the oppressive power.[19] This standpoint has become evident in various General Assembly resolutions adopted particularly in the 1970s, affirming the legitimacy of the struggles of the liberation movements from colonial domination and alien subjugation, "by all available means including armed struggle."[20] Although this should not be taken as a legal right proper granted to

---

[16] See for example, *Reports of the Special Committee on Principles of International Law*, UN. Documents A/6230 (1966) and A/6799 (1967).
[17] *Ibid.*
[18] Article 3 of the *Definition of Aggression*, which lists the acts that qualify as 'aggression,' do not refer to 'colonialism' as one constituting 'aggression.' However, Article 4 lays down that the acts enumerated in Article 3 "are not exhaustive and the Security Council may determine that other acts constitute aggression under the provisions of the Charter." In this sense, the Security Council enjoys wide discretion under Article 39 of the Charter in determining any instance of 'colonialism' as an act of aggression. However, the Security Council has not taken a decision to this effect thus far. See Karaosmanoğlu, *İç Çatışmaların Çözümü ve Uluslararası Örgütler*, 152.
[19] Akehurst, *A Modern Introduction to International Law*, 155.
[20] See for example, GA Resols. 3103 (XXVIII), *Basic Principles of the Legal Status of the Combatants Struggling Against Colonial and Alien Domination and Racist Regimes*, 12 December 1973; 31/91, *Non-Interference in the Internal Affairs of States*, 14 December 1976; 31/92, *Implementation of the Declaration on the Strengthening of International Security*, 14 December 1976; 32/42, *Implementation of the Declaration of the Granting of Independence to Colonial Countries and Peoples*, 7 December 1977; 32/154, *Implementation of the Declaration on the Strengthening of International Security*, 19 December 1977; 32/14, *Implementation of the Universal Realization of the Right of Peoples to Self-Determination and of the Speedy Granting of Independence to Colonial Countries and Peoples for the Effective Guarantee and Observance of Human Rights*, 7 November

liberation movements, it can be said that a license to use force is conferred on them by the international community.[21] Both the *Declaration on Principles of International Law* and the *Definition of Aggression* reflect this formulation.[22] For instance, *Definition of Aggression* reaffirms the right of self-determination of peoples forcibly deprived of that right "under colonial and racist regimes or other forms of alien domination," and "the right of these peoples to struggle to that end."[23]

In this context, the question arises as to who is entitled to the right of self-determination. The Assembly resolutions and declarations confer the right of self-determination upon the peoples of non-self-governing territories, trust territories and mandated territories, but remain reluctant to acknowledge the right of self-determination in non-colonial situations. For example, while paragraph 2 of *Declaration on the Granting of Independence* states that "all peoples have the right of self-determination," paragraph 6 deems attempts to "partial or total disruption of the national unity or the territorial integrity of a country" as "incompatible with the purposes and principles of the Charter."[24] Similarly, the *Declaration on Principles of International Law* affirms that the principle of self-determination does not authorize "any action which would dismember" independent states "conducting themselves with the principle of equal rights and self-determination of peoples ... and thus possessed of a government representing the whole people ... without distinction as to

---

1977; 39/50, *Question of Namibia*, 12 December 1984; 39/72, *Policies of Apartheid of the Government of South Africa*, 13 December 1984.

[21] Cassese, *Self-Determination of Peoples*, 198.

[22] GA Res. 2625 (XXV), 24 October 1970; GA Res. 3314 (XXIX), *Definition of Aggression*, 14 December 1974.

[23] GA Res. 3314 (XXIX), Article 7, 14 December 1974.

[24] GA Res. 1514 (XV), 14 December 1960.

race, creed or colour."[25] Although this may seem to imply that secessionist action is allowed when the government does not represent the whole people, the UN resolutions on self-determination do not extend the right of self-determination to 'nations' or 'minorities' within an established state, but rather confine the right to the peoples under colonial and racist regimes or other forms of alien domination.[26]

1. 1. 1. 3. The Use of Force by Third States in Support of Self-Determination

A final issue, which is the most relevant to the purposes of the present study, is whether third states are entitled to take any action against a state that forcibly denies the right of self-determination. More precisely, the question is whether and under what circumstances the implementation of the principle of self-determination can be invoked to justify a direct military intervention. In this respect, the general view seems to accept that while third states are permitted to give military equipment and financial or technical assistance to liberation movements, they are not allowed to send armed troops in support of such movements.[27] In fact, a number of the General Assembly resolutions have called on states to give all forms of moral and material assistance to peoples struggling to attain self-determination.[28] However, the staunch

---

[25] GA Res. 2625 (XXV), 24 October 1970.

[26] Richard Falk, "Intervention and National Liberation" in Hedley Bull (ed.), *Intervention in World Politics* (Oxford: Oxford University Press, 1984), 129.

[27] Cassese, *Self-Determination of Peoples*, 199; Shaw, *International Law*, 702. It should be noted that Judge Schwebel has taken a more restrictive view in his dissenting opinion in *Nicaragua* case. He maintained that "it is lawful for a foreign State or movement to give to a people struggling for self-determination moral, political and humanitarian assistance; but it is not lawful for a foreign State or a movement to intervene in that struggle with force or to provide arms, supplies or other logistical support in the prosecution of armed rebellion." *ICJ Reports* (1986), Dissenting Opinion of Judge Schwebel, para. 180.

[28] See for example, GA Resols. 2105(XX), *Implementation of the Declaration on the Granting of Independence to Colonial Countries and* Peoples, 20 December 1965; 2734 (XXV), *Declaration on the Strengthening of International Security*, 16 December 1970; 31/29, *Information From Non-Self Governing Territories Transmitted Under Article 73E of the Charter of the United Nations*, 29

opposition of Western states to "material assistance,"[29] which could include weapons among others, eventually led to the formulation that recognized the right of peoples struggling against the colonial rule to receive 'support' from other states. The *Declaration on Principles of International Law* mirrors this uneasy compromise regarding the position of the third states vis-a-vis the liberation movements:

> "In their action against, and resistance to, such forcible action [by a State, seeking to deprive a people of its right to self-determination] in pursuit of the exercise of their right to self-determination, such peoples are entitled to seek and receive support in accordance with the purposes and principles of the Charter."[30]

As such, the language of the Declaration does not specify 'armed' support. Moreover, it underlines that the support permitted is to be "in accordance with the purposes and principles of the Charter." On the other hand, the Declaration also includes a clause, which reflects the priority attached to territorial integrity of states:

> "Every State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country."[31]

Hence, it appears that the Declaration distinguishes liberation movements in the sense of decolonization from secessionist movements in non-colonial states. While the Declaration allows third state support to the former, it rules it out to the latter.

Similarly, the *Definition of Aggression* reaffirms the right of peoples, "particularly peoples under colonial and racist regimes or other forms of alien domination," to

---

November 1976; 31/33, *Adverse Consequences For the Enjoyment of Human Rights of Political, Military, Economic and Other Forms of Assistance Given to Colonial and Racist Regimes in Southern Africa*, 30 November 1976; 32/10, *Decade For Action to Combat Racism and Racial Discrimination*, 7 November 1977; and 32/154, *Implementation of the Declaration on the Strengthening of International Security*, 19 December 1977.

[29] For example, GA Res. 2105 (XX) passed by 74 votes to 6 with 27 abstentions. The Western states either voted against or abstained. See *UN Yearbook* (1965), 554.

[30] GA Res. 2625 (XXV), 24 October 1970.

self-determination, independence and freedom, and to seek and receive support for these ends. Like the *Declaration on Principles of International Law*, however, the *Definition of Aggression* does not spell out the nature of the support. In addition, both the *Declaration on Principles of International Law* and Article 6 of the *Definition of Aggression* underscore that none of the rules laid down in these documents "shall be construed as in any way enlarging or diminishing" the scope of the Charter's provisions "concerning cases in which the use of force is lawful." Hence, while both resolutions recognize a right of revolution, and in effect legitimate "support for anti-colonial, anti-racist, anti-hegemonic action" as an exception to the rule of non-intervention,[32] the support which revolutionaries may seek and receive is limited by the terms of the resolutions as well as purposes of the Charter.[33] In this sense, the 'support' in question should not extend to include the use of force, which could possibly prolong the conflict to a degree that would endanger international peace and security.[34]

The reluctance to endorse 'armed' support can also be inferred from the debates before the voting of the *Declaration on Principles of International Law*. In voting for the resolution, the United States representative, for example, indicated his agreement with the British representative that the text cannot "be regarded as affording legal sanction for any and every course of action which might be taken in the circumstances contemplated." He further stated that:

> "We agree, as the United Kingdom said, that States are not entitled 'under the Charter, to intervene by giving military

[31] GA Res. 2625 (XXV), 24 October 1970.
[32] Falk, "Intervention and National Liberation," 130.
[33] Schwebel, "Wars of Liberation as Fought in the UN Organs," 456.
[34] Karaosmanoğlu, *İç Çatışmaların Çözümü ve Uluslararası Örgütler*, 156.

> support or armed assistance in Non-Self-Governing Territories or elsewhere. The support which ... States were entitled to give peoples deprived of their right to self-determination was ... limited to such support as was in accordance with the purposes and principles of the Charter and was therefore controlled by the overriding duty to maintain international peace and security.' In short, the Declaration [on Friendly Relations] does not constitute a license for gun-running."[35]

On the other hand, apart from the language of the *Declaration on Principles of International Law* which does not specify the kind of aid a people may receive in its struggle for self-determination, one other difficulty related to the military assistance to peoples entitled to the right of self-determination arises from the complexity of reconciling it with the general rule against providing help to the insurgents in civil war. In this respect, one prominent scholar argues that insofar as breaches of other rules of international law, for example human rights violations, does not justify aid given to insurgents, there is no logical rationale for "treating violations of the right of self-determination differently from other breaches of international law."[36] As a result, although the UN documents have granted the right to seek and receive support to the peoples entitled to self-determination, to the extent that there exists no explicit reference to a right to ask for foreign military aid, it can be said that international law does not recognize a general right to use force for the purpose of assisting peoples to achieve self-determination.[37]

---

[35] Statement by the US Alternate Representative in the Legal Committee of the General Assembly, 24 September 1970, Press Release USUN-122 (1970), 7.
[36] Akehurst, *A Modern Introduction to International Law*, 258.
[37] Tanca, *Foreign Armed Intervention*, 107.

1. 1. 2. State Practice and UN Responses to Military Interventions to Assist Self-Determination

Three cases of military interventions warrant close examination where the principle of self-determination played a significant role: the Indian intervention in Goa, Daman and Diu (1961), the Indian intervention in East Pakistan (1971) and the Indonesian intervention in East Timor (1975).[38]

When in December 1961 Indian forces attacked the Portuguese forces in what Portugal termed Portuguese territories,[39] India argued that Goa, Daman, Diu were by nature Indian and that India was responding to colonialism and exercising its right to self-defense.[40] In the Security Council, the Indian representative described these territories as "inalienable part of India unlawfully occupied by Portugal."[41] The Council's reaction was largely against Indian line of argument, mainly on the basis of the illegal use of force.[42] The United States representative maintained that the case was not about colonialism, but rather about a violation of one of the basic principles of the Charter, as embodied in Article 2(4).[43] Other states including the United

---

[38] The Falklands conflict between the United Kingdom and Argentina, which the UK argued to involve a right to self-determination, is not a case considered in this study, for it was an "international conflict" in conventional terms, whereby two sovereign states fought with regular armies. Similarly, in various statements President Reagan justified the US aid to contras in Nicaragua as assistance to people who were demanding the right to determine their own government. However, insofar as this argument was not part of the official legal justification, the US action in Nicaragua is not considered within this context.

[39] For detailed account of events, see "Pro-invasion Developments. - Indian and Portuguese Allegations and Counter-allegations. - Mr. Nehru's Statements. - U Thant's Appeal for Indo-Portuguese Negotiations – Replies by Dr. Salazar and Mr. Nehru" and "The Invasion of Goa," *Keesing's Record of World Events* 8 (March 1962), http://www.keesings.com.

[40] *UN Yearbook* (1961), 130.

[41] "Security Council Meeting on Goa Crisis - Mr. Stevenson's Criticism of Indian Action. - Soviet Veto of Western Resolution," *Keesing's* 8 (March 1962).

[42] For reactions of other states, see "Reactions in Other Countries," *Keesing's* 8 (March 1962).

[43] *UN Yearbook* (1961), 130. See also, "Security Council Meeting on Goa Crisis - Mr. Stevenson's Criticism of Indian Action. - Soviet Veto of Western Resolution," *Keesing's* 8 (March 1962).

Kingdom, Turkey, France, Ecuador, China and Chile held that force was an illegal means to resolve territorial disputes.[44] Joining the United States, they called for an immediate cease-fire and resumption of negotiations. On the other hand, recalling the General Assembly Resolution 1542 (XV) of 1960 on the *Non-Self-Governing Territories*,[45] the Soviet Union, Ceylon, Liberia and the United Arab Republic contended that Portugal possessed no sovereign right over the non-self-governing-territories in Asia, and thus opposed the idea that there was an act of aggression committed by India. The Soviet representative further stated that Portuguese refusal to fulfill the terms of the General Assembly's *Declaration on the Granting of Independence to Colonial Countries and Peoples*[46] had generated a threat to international peace and security in many parts of the world, including Goa. These states agreed that the issue involved a colonial question. More specifically, the issue according to them, was the liberation of colonial dependence of peoples and territories which constitutes integral part of India.[47] Two draft resolutions, each of which was presented by the supporters of the respective arguments, were voted.[48] Neither of them was adopted. But the majority of the Security Council voted in favor of the resolution introduced by France, Turkey, the United Kingdom and the United States, calling for a cease-fire, withdrawal of Indian forces from Goa and settlement of the dispute by peaceful means.[49] By this resolution, recalling Article 1 of the Charter, which "specifies as one of the purposes of the United Nations the

---

[44] "Security Council Meeting on Goa Crisis - Mr. Stevenson's Criticism of Indian Action. - Soviet Veto of Western Resolution," *Keesing's* 8 (March 1962).
[45] GA Res. 1542(XV), 15 December 1960.
[46] GA Res. 1514 (XV), 14 December 1960.
[47] *UN Yearbook* (1961), 131. See also, "Security Council Meeting on Goa Crisis - Mr. Stevenson's Criticism of Indian Action. - Soviet Veto of Western Resolution," *Keesing's* 8 (March 1962).
[48] Draft resolution by France, Turkey, the United Kingdom and the United States, UN Doc. S/5033 (1961) and draft resolution by Ceylon, Liberia and the United Arab Republic, UN Doc. S/5032(1961).

development of friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples," the Council would have deplored the Indian use of force in Goa, Daman and Diu. Nonetheless, during consideration of the Portuguese colonialism, the General Assembly adopted a resolution on 19 December 1961 that condemned "the continuing non-compliance of the Government of Portugal with its obligations under Chapter XI of the Charter" and "with the terms of General Assembly Resolution 1542(XV)."[50]

In December 1971, besides justifying its intervention as responding to an earlier Pakistani attack and reacting against the massive inflow of the refugees, India defended it on the basis of assistance to the people of Bangladesh to achieve freedom.[51] Speaking at the Security Council, the Indian foreign minister claimed that the Indian use of force was justified to prevent the Pakistani violations of human rights and promote self-determination.[52] In the Security Council, along with Pakistan itself, the countries that openly condemned the dismemberment of Pakistan and the foundation of Bangladesh were the United States, China, Somalia, Tunisia and Saudi Arabia. The representatives of these countries expressly argued that military intervention for promoting self-determination was not permissible.[53] On the other hand, whilst not openly supporting the Indian intervention, other countries, especially the USSR, Poland, Ceylon, Syria, Argentina, Turkey, held that any solution of the

---

[49] The resolution received 7 votes in favor (the four sponsors, Chile, Ecuador and Nationalist China) and 4 against (Ceylon, Liberia, United Arab Republic and the USSR).

[50] GA Res. 1699(XVI), 19 December 1961, adopted by 90 votes in favor to 3 against (Portugal, South Africa, Spain), with 2 abstentions (Bolivia, France). Chapter XI of the Charter concerns Declaration Regarding Non-Self-Governing Territories.

[51] See statements by the Permanent Representative of India at the UN General Assembly, UN Doc. A/PV.2003 (1971) and by the Indian Foreign Minister at the Security Council, UN Doc. S/PV.1611 (1971).

[52] UN Doc. S/PV.1608 (1971), 141.

issue must take the will of the Eastern-Pakistani people into consideration. This stance was implicitly endorsed by the United Kingdom and France as well.[54] However, initially having failed to agree on a position regarding the issue, the Security Council referred the matter to the General Assembly, which adopted a resolution that portrayed the hostilities between India and Pakistan as "an immediate threat to international peace and security," and called for a cease-fire and withdrawal of all armed forces.[55] The socialist countries and India voted against the resolution, since the resolution did not recognize Bangladesh.[56] Upon the request of the United States, the Security Council held a second round of meetings on the situation in the subcontinent, which resulted in the adoption of a resolution that characterized the situation, like the General Assembly, as "a threat to international peace and security," and demanded a cease-fire as well as withdrawal of all armed forces.[57]

One other example of military intervention allegedly for facilitating self-determination is Indonesian intervention in East Timor in December 1975.[58] The Indonesian government justified its intervention as a necessary action to restore the order, which was upset by the outbreak of armed conflict between two factions that started after the withdrawal of the Portuguese army, in order to enable the people to

---

[53] *UN Yearbook*, 1971, 155-156.
[54] *UN Yearbook*, 1971, 152.
[55] GA Res. 2793 (XXVI), 7 December 1971.
[56] The resolution was adopted by 104 to 11, with 10 abstentions. Negative votes were cast by Bhutan, Bulgaria, Byelorussian SSR, Cuba, Czechoslovakia, Hungary, India, Mongolia, Poland, Ukranian SSR, USSR. Among those abstained were France and the United Kingdom.
[57] SC Res. 307, 21 December 1971.
[58] For the internal situation in East Timor before the Indonesian intervention, see "Coup by UDT," Outbreak of Civil War - Proposal for Four-Nation Peace-Keeping Force," "Consolidation of Control by Fretilin - Indonesian Warnings to Fretilin," "Further Indonesian Attacks on East Timor - Change in Australian Attitude to Indonesia - Rome Talks between Portugal and Indonesia," "Declaration of Independence by Fretilin and of Merger with Indonesia by Pro-Indonesian Parties;" for the details of the Indonesian intervention, see "Indonesian Invasion of East Timor - Severance of Diplomatic

exercise its right of self-determination.[59] When East Timor was ultimately annexed, Indonesia argued that with the re-establishment of the order, the people of East Timor had freely chosen to unite with Indonesia in June 1976.[60] At the UN, the annexation of East Timor by Indonesia was openly condemned. Both the General Assembly and the Security Council adopted resolutions deploring the Indonesian armed intervention in East Timor and calling for the withdrawal of Indonesian armed forces.[61] Thus, both organs rejected the Indonesian contention that Indonesian intervention was to facilitate the exercise of the right to self-determination in East Timor. On the contrary, these resolutions together with the subsequent resolutions adopted in the following year[62] expressly stressed that the withdrawal of Indonesian troops was demanded so as to enable the people of East Timor to exercise freely their right to self-determination and independence.

The negative reactions of the UN organs to the Indian intervention in East Pakistan and the Indonesian intervention in East Timor demonstrate that the third party military intervention to promote self-determination is not admitted as a lawful use of armed force. The UN reactions may in part be explained by the lack of a general agreement as to the people who are entitled to self-determination. Nonetheless, the response of the UN to the Indian military action in East Pakistan to "facilitate self-determination," whereby many criticized the repressive Pakistani policies and stressed a solution that took into account the will of the Bengali people, suggests that

---

Relations by Portugal" and "Provisional Government Formed by Pro-Indonesian Forces," *Keesing's* 22 (January 1976).

[59] *UN Yearbook*, 1975, 859, 861.

[60] "Incorporation into Indonesia," *Keesing's* 22 (August 1976).

[61] GA Res. 3485 (XXX), 12 December 1975, adopted by 72 to 10, with 43 abstentions; and SC Res. 384, 22 December 1975, adopted unanimously.

[62] SC Res. 389, 22 April 1976 and GA Res. 31/53, 1 December 1976.

the UN is reluctant to admit assistance to self-determination as an additional justification for military intervention, even in cases where the right of self-determination of the people in concern is not disputed generally. The UN reaction to these instances of military intervention illustrates that they were considered to be in violation of Article 2(4). On the other hand, the fact that the resultant Indian annexation of the Portuguese enclave Goa[63] was not referred to the General Assembly and did not draw reaction from the international society, arguably lends weight to the contention that "wars of liberation –viewed, at any rate, as liberation from Western colonialism—are treated by the international community as an exception from Charter prohibitions on the use of force."[64] Thus, while the practice of the UN Charter system helped crystallize a legal license for people to take on armed struggle against oppressive states forcibly denying self-determination, it did not lend support to the formation of a legal right for third states to coercively intervene on behalf of those peoples.

1. 2. MILITARY INTERVENTIONS FOR THE PROTECTION OF NATIONALS

In many of the cases of military intervention, intervening states put forward the need to protect their nationals as a justification for their armed intervention. In the pre-Charter period, the right of a state to take military action to protect its nationals

[63] For the developments after the Indian action, see "Post-invasion Developments. – Goa joins Indian Union. - Statements by Air. Nehru and Mr. Krishna Menon. – Mr. Rajagopalachari's Criticism of Military Action," *Keesing's* 8 (March 1962).
[64] Schwebel, "Wars of Liberation as Fought in the UN Organs," 447.

suffering injuries within the territory of another state was recognized both in the opinion of jurists and in the practice of states.[65] For example, in the arbitration between Great Britain and Spain in 1925, known as *Spanish Moroccan Claims*, Judge Huber, the rapporteur of the commission, stated:

> "However, it cannot be denied that at a certain point the interest of a State in exercising protection over its nationals and their property can take precedence over territorial sovereignty, despite the absence of any conventional provisions. This right of intervention has been claimed by all states; only its limits are disputed."[66]

In this respect, Oppenheim makes a similar assertion:

> "The right of protection over citizens abroad, which a state holds, may cause an intervention by right to which the other party is legally bound to submit. And it matters not whether protection of the life, security, honor or property of a citizen abroad is concerned."[67]

He further states that the right of protection of citizens abroad is a "universally recognized customary rule of international law."[68]

It appears that under customary international law, in cases where diplomatic protection has either failed or insufficient to avoid an immediate danger to life or property of a state's nationals in another state, the right to resort to force as a means of protection and redress is deemed permissible. However, since the action concerned here violates the sovereignty of the state intervened, it is argued that for such an action to take place, there must be no other available means of protection.

---

[65] Derek W. Bowett, *Self-Defense in International Law* (New York: Frederick A. Praeger, 1958), 87; Ian Brownlie, *International Law and the Use of Force by States* (London: Oxford University Press, 1963), 289-296; Oscar Schachter, *International Law in Theory and Practice* (Dordrecht, the Netherlands: Martinus Nijhoff Publishers, 1991), 126.
[66] Anglo-Spanish Arbitrations (1925), quoted in Bowett, *Self-Defense in International Law*, 88.
[67] Hersch Lauterpacht (ed.), *L. Oppenheim, International Law: A Treatise, Vol. I – Peace* (London: Longmans, Green & Co., 1955), 309.
[68] *Ibid.*, 686.

Thus, such an action is allowed to the extent that "other means of protection against some injury, actual or imminent, to the persons or property" are inadequate and insofar as the injury in question stemmed either from "the acts of the territorial state and its authorities or from the acts of individuals or groups of individuals which the territorial state is unable, or unwilling, to prevent."[69]

1. 2. 1. The Question of Legality Under the UN Charter

Notwithstanding its established status within customary international law, protection of nationals does not appear in the UN Charter as an exception to the general prohibition of the use of force. As a result, although protecting the lives and property of citizens abroad has been among the frequently raised justifications for intervention in the internal affairs in the post-Charter period, scholars differ on the permissibility of intervention on such ground. In this respect, opinions of the legal scholars change mainly in accordance with the different interpretations of the prohibition of force as laid down in Article 2(4) and of the exception of self-defense as stipulated in Article 51.

1. 2. 1. 1. The Restrictive Approach

The restrictive view of the Charter maintains that although intervention for protection of nationals was a pre-Charter customary rule, the UN Charter with its general

---

[69] Bowett, *Self-Defense in International Law*, 88. For a similar view, see Robert Jennings and Arthur Watts (eds.), *Oppenheim's International Law*, Volume I (England: Longman, 1992), 442; and Funda Keskin, *Uluslararası Hukukta Kuvvet Kullanma: Savaş, Karışma ve Birleşmiş Milletler (The Use of Force in International Law: War, Intervention and the United Nations)* (Ankara: Mülkiyeliler Birliği Vakfi Yayınları, 1998), 110.

prohibition of the unilateral use of force, provides no room for the permissibility of intervention on the basis of such justification. According to the supporters of this view, the UN Charter cannot be taken to permit a right to use force for the protection of nationals without a prior Security Council authorization, for the main objective of the Charter "was to render unilateral use of force, even in self-defense, subject to [UN] control."[70] Thus, the prohibition of the use of force in Article 2(4) is absolute in that it entirely prohibits any threat or use of force in state relations. The restrictive scholars posit that the only exception to the prohibition of force is self-defense, the exercise of which is limited by Article 51 to cases of armed attack to the wronged State.[71] Moreover, it is contended that such right was often subject to abuse by the major states in the pre-Charter period, as it was frequently raised to justify military interventions undertaken for *Realpolitik* purposes,[72] and thus recognizing the permissibility of such a right would provide states a legal pretext for abusive intervention.[73]

---

[70] Ian Brownlie's work is exemplary of the restrictive view. See Brownlie, *International Law*, 273. See also, H. Waldock (ed.), J. L. Brierly, *The Law of Nations* (London: Oxford University Press, 1963), 413-432.

[71] For interpretation of Article 2(4) in absolute terms and of the exception of self-defense in Article 51 strictly confined to cases of armed attack, see generally, Hans Kelsen, *Principles of International Law* (New York: Rinehart & Company, 1952), 58-62; Louis Henkin, *How Nations Behave: Law and Foreign Policy* (New York: Columbia University Press, 1979), 139-145; Thomas Franck and Nigel Rodley, "After Bangladesh: The Law of Humanitarian Intervention by Military Force," *American Journal of International Law* 67:2 (1973), 299-302 and Akehurst, *A Modern Introduction to International Law*, 219-224. For more specific arguments on the impermissibility of intervention to protect nationals, see for example, Brownlie, *International Law*, 298-301; Ian Brownlie, "Humanitarian Intervention" in Moore (ed.), *Law and Civil War*, 217, 219; Anthony Clark Arend and Robert J. Beck, *International Law and the Use of Force, Beyond the UN Charter Paradigm* (London: Routledge, 1993), 110; Michael Akehurst, "The Use of Force to Protect Nationals Abroad," *International Relations* 5:3 (1977).

[72] Franck and Rodley, "After Bangladesh," 284.

1. 2. 1. 2. The Counter-Restrictive Approach

The counter-restrictive legal scholars argue that protection of citizens abroad is legally permissible and challenge the restrictive view mainly along three lines of arguments.[74] In the first place, there are those who consider the violation of rights of a state's nationals as legally tantamount to violation of the rights of that state, which in turn may raise the right of self-defense.[75] In this respect, it is argued that Article 51 is not establishing the right of self-defense, but rather recognizing its pre-Charter existence.[76] In scholarly writings, which adhere to this view, there is no exhaustive list of cases allowing a right to resort to force for protection of nationals, but rather there exists various assessments of the conditions and limitations under which the claim to the right of protection by force can be advanced. Adopting from the traditional conditions of self-defense, Waldock asserts that the conditions for the lawful exercise of the right comprise:

(1) an imminent threat of injury to the nationals;

(2) a failure or inability on the part of the territorial sovereign to protect them;

---

[73] See generally, Tom J. Farer, "Law and War" in Cyril E. Black and Richard A. Falk (eds.), *The Future of the International Legal Order* Volume 3 (Princeton: Princeton University Press, 1971).

[74] In addition to these arguments in support for a legal right to protection of nationals, some scholars argue for the legality of such a right within the context of humanitarian intervention. Thomas and Thomas, for example, took up the matter in connection with an international standard of justice. Ann Van Wyen Thomas and A. J. Thomas, Jr., *Non-intervention, The Law and Its Import in the Americas* (Dallas: Southern Methodist University Press, 1956), 303-309. For a similar view, see also, John Norton Moore, "Toward an Applied Theory for the Regulation of Intervention," in Moore (ed.), *Law and Civil War*, 25. In this study however, humanitarian intervention is distinguished from action carried out to protect nationals abroad, insofar as it is taken to comprise actions taken to protect non-nationals.

[75] Bowett, *Self-Defense in International Law*, 87.

[76] Leland M. Goodrich, Edvard Hambro, and Anne Patricia Simons, *Charter of the United Nations: Commentary and Documents* (New York: Columbia University Press, 1969), 344.

(3) that the measures of protection should be strictly confined to the object of protecting them against injury.[77]

Thus, according to this view, protection of nationals abroad can be viewed as protection of the state, provided that the conditions of immediacy, necessity and proportionality are satisfied.

Secondly, others point out that since the action undertaken for the protection of nationals is limited in purpose and thus cannot be considered as breach of territorial integrity or the political independence of the intervened state, it would neither constitute a violation of Article 2(4) nor contradict the principles and purposes of the United Nations.[78] In other words, insofar as such military action does not entail an extended military presence of the intervening state in the target state and does not result in a territorial loss of the victim state, it represents a limited kind of use of force, which lags behind the threshold of the use of force set by Article 2(4).

Finally, there are those scholars who claim that such a customary right has either continued to exist or been revived during the Charter period at times when the UN failed to respond effectively. One of the most ardent supporters of the former view is Bowett, who bases his argument on the intention of the framers of the UN system as derived from the *travaux préparatoires*, to preserve the customary right of self-

[77] Sir Humphrey Waldock, "The Regulation of the Use of Force by Individual States in International Law," *RCADI* 81 (1952), 467, quoted in Yoram Dinstein, *War, Aggression and Self-Defence* (Cambridge: Cambridge University Press, 1994), 226. The same criteria are also reiterated by Bowett. See Derek W. Bowett, "The Interrelation of Theories of Intervention and Self-Defense" in Moore (ed.), *Law and Civil War,* 40.

[78] Richard B. Lillich, "Humanitarian Intervention: A Reply to Ian Brownlie and A Plea For Constructive Alternatives" in Moore (ed.), *Law and Civil War,* 236-237.

defense, and thus to maintain state's right to protect its nationals.[79] In addition, Bowett contends that Article 51 is not intended to restrict the traditional right of defense "so as to exclude action taken against an imminent danger but before 'an armed attack occurs'."[80] Moreover, the language of Article 2(4) according to Bowett, is not "incompatible with the right to protect nationals" as well.[81] Aside from these provisions of the UN Charter, Bowett asserts that the practice of states in the post-Charter period also suggests that the pre-Charter rule has survived.[82] In this connection, other scholars state that the pre-Charter rule to protect nationals has been revived in the post-1945 period. For example, Lillich argues that although drafters of the UN system envisaged collective machinery, in the absence of effective UN action, customary self-help measures may revive.[83] Consequently, by implication, states may intervene to protect the lives of nationals. Similarly, Reisman also maintains that the prohibition of the use of force in Article 2(4) may be considered absolute to the extent that the UN is able to act. According to him,

> "A rational and contemporary interpretation of the Charter must conclude that Article 2(4) suppresses self-help insofar as the organization can assume the role of enforcer. When it cannot, self-help prerogatives revive."[84]

Reisman contends that to adhere to a strict interpretation of Article 2(4) "would be an invitation to lawbreakers who would anticipate a paralysis in the Security Council's

---

[79] Bowett, *Self-Defense in International Law*, 184-186.
[80] *Ibid.*, 191.
[81] Derek W. Bowett, "The Use of Force for the Protection of Nationals Abroad" in Antonio Cassese (ed.), *The Current Legal Regulation of the Use of Force* (Dordrecht: Nijhoff, 1986), 40, quoted in Arend and Beck, *International Law and the Use of Force*, 107.
[82] Bowett, "The Use of Force," in Cassese, *The Current Legal Regulation*, 41, quoted in Arend and Beck, *International Law*, 107.
[83] See generally, Lillich, "Humanitarian Intervention," 229-251.
[84] W. Michael Reisman, *Nullity and Revision: The Review and Enforcement of International Judgments and Awards* (New Haven: Yale University Press, 1971), 848-849, quoted in Lillich, "Humanitarian Intervention," 239.

decision dynamics."[85] Lastly, one other view asserts that although forceful intervention on behalf of the injured nationals abroad may constitute neither a violation of Article 2(4) nor an act of aggression under Article 39, it may give rise to a "threat to peace" under the latter article. As a result, although it may be assumed that such a right is legal, acts to that effect may be at times be "deemed impermissible in any given case."[86]

As such, the difference in opinions with regards to the use of force for protection of nationals abroad stems from the differences in interpretations of Article 51 as to whether the right of self-defense is limited to armed attack or not, and of Article 2(4) as to the character of the ban of the use of force, whether it is qualified or absolute. Indeed, the debate on the legality of intervention to protect nationals is an on-going one. Notwithstanding, the fact that many states have resorted to force for protection of nationals in the post-Charter period have led most of the scholars to conclude that the gap between the restrictive views and the state practice seems to "call into question the existence of a rule prohibiting state intervention to protect nationals."[87]

---

[85] W. Michael Reisman, "Sanctions and Enforcement" in Black and Falk (eds.), *The Future of the International Legal Order*, 50.

[86] Rosalyn Higgins, *The Development of International Law Through The Political Organs of the United Nations* (London: Oxford University Press, 1963), 220.

[87] Arend and Beck, *International Law and the Use of Force,* 110. For the view that state practice supports such a right, see also, Gerhard von Glahn, *Law Among Nations, An Introduction to Public International Law* (New York: Macmillan Publishing Company, 1992), 160.

1. 2. 2. State Practice and UN Responses to Military Interventions to Protect Nationals Abroad

Indeed states' view illustrate that the protection of nationals is generally admitted as a legal ground for limited use of force. For example, during the Suez intervention in 1956, the British government underlined that nothing in the UN Charter proscribed the right of states to use force to protect the nationals abroad.[88] In the House of Lords debates following the intervention, Lord Chancellor, Viscount Kilmuir, asserted that the right to protect nationals abroad was a logical corollary of the right to self-defense:

> "Self-defense undoubtedly includes a situation in which the lives of a state's nationals abroad are threatened and it is necessary to intervene on that territory for their protection."[89]

In 1976, when Israeli forces landed at Entebbe airport in Uganda to liberate the Israeli passengers who had been taken hostage when the aircraft they were flying had been hijacked, Israel argued that the right of a state to protect its nationals was recognized by all international legal authorities. During the Council debates, quoting legal scholars such as Brierly and Bowett in support for such a right, Israel contended that the right of self-defense as enshrined in the Charter extended to protect nationals where there was necessity and immediacy.[90] In support of the Israeli argument, the representative of the United States asserted that although Israeli action caused a temporary breach of the territorial integrity of Uganda, which would not normally be

---

[88] Arend and Beck, *International Law and the Use of Force,* 96. It has to be noted that UK relied less on the protection of nationals than the need to safeguard the Suez Canal and to restore peaceful conditions in the Middle East in the UN. See *UN Yearbook* (1956), 27.

[89] Quoted in Tom Hiller, *Sourcebook on Public International Law* (London: Cavendish Publishing Limited, 1998), 609.

[90] UN Doc. S/PV.1939 (1976) and UN Doc. S/PV.1941 (1976), reprinted in D. J. Harris, *Cases and Materials on International Law* (London: Sweet & Maxwell, 1998), 909-910.

permissible under the Charter, there existed a "well-established right to use force for the protection of one's own nationals from an imminent threat of injury or death in a situation where the State in whose territory were located was either unwilling or unable to protect them."[91] One other example of the use of force for the protection of nationals is the US rescue operation in 1980 for the American hostages held in the US Embassy in Tehran, during which the US emphasized that it was strictly a humanitarian mission.

The significance of these instances of the use of force lies in demonstrating the state practice with respect to the claim of protection of nationals. Nonetheless, for the purposes of the study, the cases relevant are those where the target states were torn by a civil war or characterized by a situation of anarchy i.e. absence of an effective official authority or by a degree of internal disturbance. These cases whereby protection of nationals was called upon to justify military intervention in internal affairs comprise the United States intervention in Lebanon (1958), the Belgian interventions in the Congo (1960), the United States and Belgian intervention again in the Congo (1964), the United States intervention in the Dominican Republic (1965), the French intervention in Chad (1978), the French-Belgian joint intervention in the Shaba region in Zaire (1978), the United States intervention in Grenada (1983), the United States intervention in Panama (1989) and the United States operation in Liberia (1990). It should be noted that in all these instances, except two cases (Congo in 1960 and Liberia in 1990), the justification of protection of nationals was raised along with other justifications.

[91] UN Doc. S/PV.1941 (1976), 31-32; *UN Yearbook* (1976), 319.

In the case of the United States intervention in Lebanon, apart from the invitation by President Chamoun of Lebanon and that of collective self-defense to preserve Lebanese sovereignty and integrity, President Eisenhower claimed that the US action had also aimed to protect nationals.[92] The US intervention in Lebanon and the following UN reaction were examined in detail within the context of the former justifications explored in Part II. In fact, the discussions in the Security Council and the General Assembly focused mainly on the allegations of subversion and the permissibility of such action within the terms of Article 51. In regard to the protection of nationals, no direct objection was raised. Thus, to the extent that the US justification of self-defense was criticized as unfounded, it can be said that the US claim of protection of nationals was not admitted as well. However, it should be recalled that the representatives of China, France, the United Kingdom and Canada agreed that the US action contravened neither the UN Charter nor the established rules of international law. On the other hand, during the Assembly debate, a number of countries remarked that the protection of nationals was a pretext for intervention and a means through which stronger powers exert pressure against smaller ones.[93] The following General Assembly resolution on the matter however, made only a general reference to the rule of non-interference in internal affairs.[94]

---

[92] Statement by President Eisenhower, *Department of State Bulletin* (1958), 181. The same justifications were also raised during the consideration of the issue at the Security Council. See *UN Yearbook* (1958), 40. On the other hand, some scholars in the restrictive tradition opposed to the extension of the terms of Article 51 to the protection of nationals in the Lebanon case. For example, questioning the US argument of protection of nationals, Wright contended that the US had to demonstrate that the immediate danger to American citizens in Lebanon constituted "an armed attack" upon the United States. Quincy Wright, "United States Intervention in the Lebanon," *American Journal of International Law* 53:1 (January 1959), 117.

[93] See for example the statements of Poland and Ethiopia in the General Assembly in General Assembly, IIIrd Emergency Special Session, 19 August 1958, para. 84; and 20 August 1958, para. 75 respectively, quoted in Antonio Cassese, *International Law in a Divided World* (Oxford: Clarendon Press, 1994), 238.

It was during the Belgian intervention in the Congo (1960) that the necessity of protection of nationals was most expressly invoked and repeatedly stressed as the sole aim of the intervention. Upon the outbreak of a mutiny in the ranks of the Congolese Force Publique in Leopoldville in the immediate aftermath of independence, granted on 30 June 1960, Belgium announced that it would dispatch further troops to the two bases, which it already had in the Congo and which it expected to retain under an unratified Treaty of Friendship that had been signed at the time of independence of the Congo, to ensure the safety of persons in Leopoldville.[95] There were conflicting statements from the Congolese government officials. While Mr. Bomboko, the Foreign Minister announced that the intervention of Belgian troops had taken place at his request, Mr. Lumumba (the Prime Minister and the Defense Minister) declared in a broadcast that any intervention by Belgium without the approval of the Congolese Government, and specifically of the Defense Minister (i.e. himself), would be a violation of the country's sovereignty and of the treaty with Belgium, and he protested against the Belgian action in sending reinforcements to the Congo.[96] After the special session of the Belgian Chamber of Representatives on 11 July 1960, the Belgian Prime Minister, Mr. Eyskens affirmed that Belgian troops had been compelled to intervene in the Congo to save lives. He further maintained that Belgium fully recognized and respected Congolese

---

[94] GA Res. 1237 (ES-III), 21 August 1958.

[95] For the main events regarding the internal disturbance in the Congo leading to the Belgian intervention, see "Achievement of Independence as Republic of the Congo - Congolese Government formed by M. Lumumba. - M. Kasavubu Becomes Head of State," "Proclamation of Congolese Independence. - King Baudouin's Vidit to Leopoldville," *Keesing's* 6 (August 1960); "Incidents Before Outbreak of Mutiny," "Outbreak of Mutiny. - Measures to Meet Mutineers' Demands – First Belgian Military Actions," "Developments Preceding First Security Council Meeting," *Keesing's* 6 (September 1960). See also, Evan Luard, "The Civil War in Congo" in Evan Luard (ed.), *The International Regulation of Civil Wars* (New York: New York University Press, 1972), 108-124; and Donald W. McNemar, "The Postindependence War in the Congo" in Richard A. Falk (ed.), *The International Law of Civil War* (Baltimore: The Johns Hopkins University Press, 1971), 244-302.

[96] "Events of July 10," *Keesing's* 6 (September 1960).

independence, but had been faced by the duty, recognized by international law, of saving the lives of Belgian subjects.[97] On 12-13 July 1960, the President (Joseph Kasavubu) and the Prime Minister (Patrice Lumumba) of the Republic had telegraphed the Secretary-General to ask for the urgent dispatch of UN military assistance in view of the Belgian action of sending the troop reinforcements to the Congo. The telegram said that the Belgians had acted "in violation of the treaty of friendship" which laid down that Belgian troops "can only intervene at the express request of the Congolese Government," no such request had been made, and the Belgian action therefore constituted "an act of aggression" against the Congo. It was also held that the real cause of most of the disorder lied in "colonialist machinations" of the Belgian government, which had led to the declaration of secession by the provincial authorities of Katanga (the richest province in the Congo).[98] The telegram stressed that "the purpose of the aid requested is not to restore the internal situation of the Congo, but rather to protect the national territory against acts of aggression committed by Belgian metropolitan troops."[99] The Security Council first met on 13 July 1960, at the request of the Secretary-General, Dr. Hammarskjold, under Article 99 of the Charter, to discuss the Congo situation.[100] In the Security Council, the representative of Belgium maintained intervention had taken place only after the Congolese Government had been deprived of all means of maintaining order as a

---

[97] "Events of July 11," *Keesing's* 6 (September 1960).

[98] Katanga's independence was announced by Mr. Tshombe in Elisabethville on 11 July 1960. In his statement, Mr. Tshombe maintained that the Katanga Government was asking Belgium, "who has just given the Government the aid of her own troops to protect human lives," to give technical, financial, and military assistance, and asked Belgium to help in re-establishing order and public security. Mr. Tshombe made a similar appeal to the United Kingdom to which the British government replied as "...in the circumstances of the case, it would not be possible for troops to be sent in at the request of an authority other than the lawfully constituted Central Government." See "Events of July 11," *Keesing's* 6 (September 1960).

[99] UN Doc. S/4382 (1960).

result of the mutinies. The Belgian Government, he declared, had decided to intervene only to save the lives of Europeans and others; their action had been limited in scope; there had been no interference in Congolese domestic affairs; its troops would be withdrawn as soon as the maintenance of order and safety of persons were restored. He also stressed that in Katanga, the Belgian troops had acted by agreement with the Provincial Government.[101] The United States, Italy, the United Kingdom, France and Argentina supported the Belgian claim. For example, the Italian representative held that the Belgian troops had intervened only to keep order and they wished to remain only until UN help arrived. Thus, it should be considered as "a temporary security action."[102] The UK representative maintained that the Belgian troops in the Congo were carrying out a humanitarian task, for which Britain was grateful "and for which...the international community should be grateful."[103] Similarly, the French representative argued that Belgium action aimed only at saving the lives of her own nationals and of other countries' nationals, who were threatened, and that "their mission of protecting lives and property" was in accordance "with a recognized principle of international law, namely intervention on humanitarian grounds."[104] However, the socialist and some of the non-aligned countries, most notably the Soviet Union, Poland and Tunisia, condemned the Belgian intervention as one of aggression.[105] The Tunisian representative declared the arrival of the

---

[100] Article 99 of the Charter provides that: "The Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security." It has to be noted that this was the first time a Secretary-General invoked this article.
[101] See "First Security Council Debate," *Keesing's* 6 (September 1960). The Belgian representative repeated the same arguments during the second meeting of the Security Council on 20 July 1960. See *UN Yearbook* (1960), 54; and "Second Security Council Debate and Resolution," *Keesing's* 6 (September 1960).
[102] UN Doc. S/PV.873 (1960), 23-24.
[103] UN Doc. S/PV.873 (1960), 25-26.
[104] UN Doc. S/PV.873 (1960), 28. See also "First Security Council Debate," *Keesing's* 6 (September 1960).
[105] *UN Yearbook* (1960), 53.

Belgian troops as "an aggressive act that nothing can justify," and which could in no way be excused by the dangers to the Belgian civilian residents.[106] Likewise, the Soviet representative asserted that Belgium had planned "armed aggression" with the support of the US, the UK, France, and Western Germany, and demanded immediate UN action to "end the aggression."[107] Poland insisted that Belgium's claim to protect human life was simply a pretext to further its own commercial interests.[108] The consequent Security Council Resolution called for withdrawal of Belgian troops from the Congo and authorized the Secretary-General "to take the necessary measures, in consultation with the Government of the Congo Republic, to provide the government with such military assistance as may be necessary."[109] However, while Western states supported the view that Belgium should withdraw only after the UN troops restore order, the Soviet Union and other non-aligned countries argued that the Belgian withdrawal should be unconditional.[110] The following Security Council resolutions repeatedly called upon Belgium to withdraw its forces and stressed that states should refrain from any action that would undermine the territorial integrity and the political independence of the Republic of Congo.[111] The General Assembly considered the matter in its fourth emergency special session, which resulted in a resolution displaying full support of the earlier Security Council

---

[106] UN Doc. S/PV.878 (1960), 5.
[107] UN Doc. S/PV.873 (1960), 16-21. It has to be noted that a day before the Security Council meeting, the Soviet Union issued a statement dismissing the argument that lives and property of Europeans in the Congo were in need of protection. The Soviet note claimed that "similar hypocritical arguments were used in attempts to justify the armed intervention in the Lebanon." For Soviet note, see "Events of July 13," 6 (September 1960).
[108] UN Doc. S/PV.878 (1960), 18-19.
[109] SC Res. 143, 14 July 1960. Adopted by 8 votes in favor to 0, with 3 abstentions (China, France and the United Kingdom). On the same day, M. Tshombe stated that in his communication to Dr. Hammarskjold he had reiterated that Belgian forces had taken action at his Government's request, and had "protested energetically" against the Security Council's call to Belgium to withdraw. See "Events of July 14," *Keesing's* 6 (September 1960).
[110] *UN Yearbook* (1960), 53.

resolutions on the matter.[112] The General Assembly took up a harder stance in its following resolutions, deploring the Belgian non-compliance with the Security Council resolutions, deeming the presence of Belgian forces as the central factor in the grave situation in the Congo which posed a threat to international peace and security, and calling upon Belgium to comply "fully and promptly with the will of the Security Council and of the General Assembly" and withdraw its forces.[113]

Four years after the Belgian intervention in Congo, when the United States and Belgium sent forces upon the outbreak of a civil war again, both maintained that the reason for intervention was the humanitarian one of saving civilians, with the authorization of the lawful government of the Congo.[114] The two countries notified the Council immediately after the operation started. The Democratic Republic of the Congo also informed the Council that it had authorized the rescue operation in view of the humanitarian objectives of the operation.[115] Notwithstanding, many countries, including most of the African countries condemned the operation. They contended that the military operations constituted an intervention to African affairs, a violation of the Charter and a threat to peace and security of the African continent.[116] Likewise, the Soviet Union characterized the military operations in Stanleyville as a blatant act of interference in the internal affairs of the Congo and as a threat to the

---

[111] See SC Resols. 145, 22 July 1960 (adopted unanimously); 146 (France and Italy abstained), 9 August 1960; and 161(France and the USSR abstained), 21 February 1961.
[112] GA Res. 1474 (ES-IV), 20 September 1960. Adopted by 70 votes to 0, with 11 abstentions.
[113] See GA Resols. 1599(XV), 15 April 1961 and 1600 (XV), 15 April 1961.
[114] For the Belgian statement, see UN Doc. S/PV.1173 (1964), 3; for the US statement, see UN Doc. S/PV.1174 (1964), 13. For the details of the American action in Congo, see Richard A. Falk, *Legal Order in a Violent World* (Princeton: Princeton University Press, 1968), 324-335.
[115] *UN Yearbook* (1964), 95.
[116] The supporters of this view included Algeria, Burundi, the Congo (Brazzaville), Ethiopia, Ghana, Guinea, Kenya, Mali, Sudan, Tunisia, the United Arab Republic and the United Republic of Tanzania. *UN Yearbook* (1964), 96. See also, "Communist and African Reactions to Stanleyville Operation," *Keesing's* 11 (February 1965).

independence of both the Congo and other African countries.[117] Also, in a statement handed to the Belgian and British Ambassadors and the US Charge d'Affaires in Moscow on 25 November 1964, the Soviet government alleged that the reason for this action was "not so much the presence of a certain number of foreigners in Stanleyville as the fact that the colonial Powers have realized the inability of their stooge Tshombe to cope with the situation in the country and have decided to give him open assistance in order to suppress the national liberation movement." The Soviet government demanded "the immediate ending of the military intervention" and the "withdrawal of all foreign mercenaries" from the Congo.[118] The supporting countries laid emphasis on mainly the humanitarian character of the operation.[119] Upon the request of twenty-two countries,[120] the Security Council met in December 1964 and adopted a resolution, which requested all states to refrain from intervention in the domestic affairs of the Congo.[121] Apart from this resolution, the language of which was confined to generic terms rather than a specific condemnation of the military action, the matter was not considered further. It is notable that the General Assembly neither considered the matter nor adopted any resolution.

The United States' intervention in the Dominican Republic in April 1965 was also undertaken under the aegis of protection of nationals and other foreigners. President

---

[117] *UN Yearbook* (1964), 95.
[118] "Communist and African Reactions to Stanleyville Operation," *Keesing's* 11 (February 1965).
[119] Among the supporting countries were the United Kingdom, China, France, Brazil, Bolivia and Norway. African countries which did not oppose the action included the Ivory Coast, Morocco, Nigeria, Sierra Leone, Togo and Madagascar. See *UN Yearbook* (1964), 98; UN Doc. S/PV.1173 (1964), 38; and "Communist and African Reactions to Stanleyville Operation," *Keesing's* 11 (February 1965).
[120] The twenty-two countries requesting the Council meeting were Afghanistan, Algeria, Burundi, Kampuchea, the Central African Republic, the Congo (Brazzaville), Dahomey, Ethiopia, Ghana, Guinea, Indonesia, Kenya, Malawi, Mali, Mauritania, Somalia, Sudan, Uganda, the United Arab Republic, the United Republic of Tanzania, Yugoslavia and Zambia. *UN Yearbook* (1964), 96.
[121] SC Res. 199, 30 November 1964. Adopted by 10 to 0, with 1 abstention (France).

Johnson asserted that the US was informed by the "Dominican law authority enforcement and military officials" that they could no longer guarantee the safety of Americans and other foreign nationals and that the assistance of the US forces were required.[122] In further statements, President Johnson underlined that the United States' objective in the Dominican Republic was "the protection of the United States nationals and their safe evacuation."[123] The US representative reiterated the same account during the consideration of the matter in the Security Council.[124] The US action was met with condemnation mainly from the Soviet Union, Cuba, Uruguay and Jordan. The opponents argued that the action was an act of aggression and intervention in the domestic jurisdiction of a sovereign state. The Soviet representative quoted from an official US State Department document in support of his allegation that the United States had undertaken armed intervention against other countries on 85 occasions between 1812 and 1932, and on every occasion, he said, the US had acted under cover of such false excuses as "the protection of American lives."[125] Criticizing the US action, the French representative emphasized that, according to numerous precedents, an outside government that decided to evacuate its citizens from another country had the obligation to limit its operations in terms of 'objective,' 'duration,' and 'scale.' However, the landing of US troops "on such a considerable scale," he argued, would mean "a genuine armed intervention, the need

---

[122] Statement by President Johnson reprinted in *Department of State Bulletin* 52 (1965), 738. See also, Max Hilaire, *International Law and the United States Military Intervention in the Western Hemisphere* (The Hague: Kluwer Law International, 1997), 64-66; Franck and Rodley, "After Bangladesh," 287. In addition to the protection of nationals, the US extended its justifications to include restoring law and order upon invitation from the government of the Dominican Republic and prevention of a communist take-over and undertaking a regional peace-keeping on behalf of the OAS.
[123] Statement by President Johnson reprinted in *Department of State Bulletin* 52 (1965), 743.
[124] *UN Yearbook* (1965), 141.
[125] "Security Council Debates," *Keesing's* 11 (July 1965).

for which does not appear to exist."[126] Among the supporters were the United Kingdom and Bolivia. The British representative expressed his government's full understanding of the US action to protect foreign nationals whose lives were in danger.[127] On the other hand, the Netherlands supported the action insofar as it was within the OAS (Organization of American States) framework, while Malaysia held somewhat a neutral position.[128] The following Security Council resolutions did not go beyond calling for a cease-fire.[129] The General Assembly did not consider the matter.

The protection of nationals was also invoked in the 1978 French-Belgian joint intervention in Shaba region in Zaire, and in the French intervention in Chad in the same year. In the Zairean case, there had been reports from the area alleging that the numbers of civilian victims of the fighting, particularly French nationals, were increasing.[130] The French statement regarding the action in Zaire declared that troops had been sent "at the request of the Zaire government," with the aim of "protecting the French and foreign residents." It also underlined the temporary nature of the mission, which would end as soon as the legal authorities were in a position to ensure control of the situation. Similarly, the Belgian Prime Minister stressed that the purpose of the Belgian operation was to "bring help to the European and local population."[131] A number of countries approved the intervention. For example, after the meeting of the Foreign Ministers of the European Community on 20-21 May

---

[126] *Ibid.*
[127] *Ibid.*
[128] *UN Yearbook* (1965), 140-143.
[129] SC Resols. 203, 14 May 1965 and 205, 22 May 1965.
[130] "Invasion of Shaba Province by Rebels - Arrival of French and Belgian Paratroops," *Keesing's* 24 (August 1978).

1978, the Danish Foreign Minister declared on behalf of his colleagues that "the French initiative in Kolwezi has met with our complete understanding as a purely humanitarian, and therefore very natural, rescue operation."[132] Also most of the African countries attending at the fifth Franco-African Conference of heads of state or government, which took place in Paris on 22-23 May 1978, endorsed the French intervention in Zaire.[133] A Soviet statement, on the other hand, described the rescue operation as merely "a fig leaf to cover up an undisguised interference in the internal affairs" of Zaire.[134] France also argued that the aim of its 1978 operation in Chad was to ensure the safety of French nationals.[135] The French involvement in Chad was mostly opposed by Libya, Sudan and the Congo. But the criticism was mainly directed to the governments of African states for inviting foreign troops, to which Zaire and Mauritania protested by stating that it was states' right to request help from whichever countries they wished.[136] None of the interventions were considered in the UN.

One other intervention significant within the context of protection of nationals is the US military operation in Grenada in 1983. Among other justifications, the United States made the protection of nationals as the central theme of its action.[137] The US Ambassador to the UN, Ambassador Kirkpatrick argued at the Security Council

---

[131] For the French and Belgian justifications, see "Invasion of Shaba Province by Rebels - Arrival of French and Belgian Paratroops," *Keesing's* 24 (August 1978).
[132] *Ibid.*
[133] "Franco-African Conference of Heads of State or Government - Moves towards Formation of African Peace-keeping Force," *Keesing's* 24 (August 1978).
[134] The *Tass* dispatch in "Allegations of Cuban and Soviet Involvement in Invasion – Cuban and Soviet Denials – Suspension of Zaire's Relations with Soviet Union, Libya and Algeria," *Keesing's* 24 (August 1978).
[135] "Allegations of French Military Involvement," *Keesing's* 24 (May 1978).
[136] "31st Meeting of Council of Ministers," *Keesing's* 24 (October 1978).

meeting on 27 October 1983, that in circumstances where anarchy prevails, "the general rule of international law permits military action for protecting endangered nationals."[138] At the subsequent General Assembly meeting, she reiterated that "the use of force by the task force was lawful under international law and the UN Charter, because it was undertaken to protect American nationals from a clear and present danger."[139] Finally, the Deputy Secretary of State, Kenneth Dam, remarked at an event that the "US action to secure and evacuate endangered US citizens on the island was undertaken in accordance with well-established principles of international law regarding the protection of one's nationals."[140] However, as mentioned elsewhere, a great majority of the states participating in the Council debate strongly condemned the intervention.[141] The opposing arguments emphasized that the action was indisputably a violation of Article 2(4) of the Charter, an act of aggression and a flagrant breach of the rule prohibiting intervention. The opponents were also dismissive of the alleged ground of protection of nationals as justification of intervention. Nicaragua, Cuba and Grenada for example, countered claims that the US citizens were in danger. The representative of Grenada read the text of the Revolutionary Military Council's (RMC) telex to the American Embassy in Barbados, in which General Hudson Austin, the leader of the RMC, guaranteed the safety of US citizens.[142] It is also notable that the US allies opposed the military action as well. For example, France was of the opinion that the justifications

---

[137] The US also defended its action as a regional peace-keeping operation within the framework of the Organization of the East Caribbean States (OECS) and an attempt to restore law and order to protect human rights upon the invitation of the Governor-General of Grenada.
[138] Statement of Ambassador Kirkpatrick at Security Council reprinted in *Department of State Bulletin* 83 (1983), 75.
[139] *Ibid.*
[140] Statement of Deputy Secretary Dam at Louisville Law Day reprinted in *Department of State Bulletin* 83 (1983), 81.
[141] For the countries condemning the intervention, see *UN Yearbook* (1983), 212.

advanced did not seem admissible insofar as under international law, intervention is permitted only in two circumstances, namely in response to a request from the legitimate authorities of the a country, or upon a decision of the Security Council. The United Kingdom, on the other hand, was more hesitant for an outright condemnation. Although it stated its disapproval of the military operation, it also asserted that the concerns of the OECS should be taken into account.[143] Upon the failure of a draft resolution deploring the intervention, sponsored by Guyana, Nicaragua and Zimbabwe,[144] the General Assembly adopted a resolution recalling the *Declaration on Principles of International Law* and the *Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States*, and deploring the armed intervention in Grenada, "which constitutes a flagrant violation of international law and of the independence, sovereignty and territorial integrity of that State." The resolution further called for an "immediate cessation of the armed intervention and the immediate withdrawal of the foreign troops from Grenada."[145] Explaining their affirmative votes after the adoption of the resolution, the majority of the states characterized the actions of the US and the Eastern Caribbean states as a crude violation of the most fundamental norms of international law, namely the prohibition of the use of force as laid down in Article 2(4), the prohibition of any act of aggression, the principle of non-intervention and the rule of non-interference in the internal affairs so as to enable peoples to exercise their right to self-

---

[142] UN Doc. S/PV.2487 (1983), 42-45.

[143] *UN Yearbook* (1983), 212-214. It has to be noted that Sir Geoffrey Howe, the British Foreign Secretary, in a House of Commons debate contented that states had a right to take military action to protect nationals abroad where there is a breakdown of law and order, and that there was no provision in the UN Charter that makes such an action unlawful. Nevertheless, he noted that the UK had taken a different view of the circumstances in Grenada. See Scott Davidson, *Grenada: A Study in Politics and the Limits of International Law* (Aldershot, England: Avebury, 1987), 115, 134.

[144] Draft resolution sponsored by Guyana, Nicaragua, Zimbabwe, UN Doc. S/16077.Rev.1 (1983). The vote was 11 to 1 (United States), with 3 abstentions (Togo, the United Kingdom and Zaire).

determination.[146] The only states, which voted against the resolution as a whole, aside from the US and its Caribbean allies, were El Salvador and Israel.[147] As such, the judgment of the greater part of the international community with regards to the US and Caribbean states' intervention in Grenada was unequivocally one of condemnation on the grounds that it had violated the most basic norms of international law.

In its invasion of Panama in December 1989, once again the US espoused the protection of American lives as the chief justification for its use of force, along with the consent of the legitimate Panamanian government to restore democracy.[148] In addition, two other alleged goals of the operation were to defend the integrity of the Panama Canal Treaty and to stop drug trafficking.[149] President Bush referred to the death of an American serviceman, and the assault and detention of another serviceman and his wife as evidence that the lives of American citizens were in imminent danger. The president also expressed his fear for the lives of thousands of Americans living in the Canal Zone area, since the Panamanian Assembly had declared a state of war between Panama and the United States.[150] The views presented in the Security Council were largely negative. Nicaragua, for example, argued that the US had committed an act of aggression under the disguise of protecting American citizens.[151] Upon the defeat of a draft resolution which would

---

[145] GA Res. 38/7, 2 November 1983.
[146] *UN Yearbook* (1983), 215-217.
[147] Upon the request of the US, a recorded vote on each operative paragraph was taken. For details of the votes on each paragraph, see *UN Yearbook* (1983), 214.
[148] *UN Yearbook* (1989), 174, 175. See also "US Justification for Intervention," *Keesing's* 35 (December 1989).
[149] Hilaire, *International Law and the United States,* 118-123.
[150] *Ibid.,* 115-116.
[151] *UN Yearbook* (1989), 174.

have condemned the US intervention and called for an immediate withdrawal of the US forces,[152] the General Assembly resolution strongly deplored the intervention in Panama by the US forces, deemed it as "a flagrant violation of international law and of the independence, sovereignty and territorial integrity" of Panama, and demanded the "immediate cessation of the intervention."[153]

When the rebellion in Liberia, which had started in December 1989, turned into a civil war,[154] the US sent ships with 2000 marines off the coast of Liberia in early June 1990 to evacuate the US diplomatic staff.[155] Although President Doe of Liberia requested assistance from the US, the US did not intervene and take sides in the Liberian conflict.[156] In fact, at the beginning of the civil strife in Liberia, the US had declared it to be as an internal affair to be resolved by Liberians themselves.[157] In the following August, upon the deterioration of the situation, the US marines landed in the capital, Monrovia, to evacuate remaining US citizens and to protect the US embassy.[158] The US emphasized that the need to protect the nationals was the sole

---

[152] Draft resolution submitted by Algeria, Colombia, Ethiopia, Malaysia, Nepal, Senegal and Yugoslavia, UN Doc. S/21048 (1989). The resolution received ten votes in favor (Algeria, Brazil, China, Colombia, Ethiopia, Malaysia, Nepal, Senegal, USSR, Yugoslavia) and 4 against (France, the United Kingdom, the US and Canada), with one abstention (Finland).

[153] GA Res. 44/240, 29 December 1989. Most of the Western states voted against the resolution. Negative votes were by Australia, Belgium, Canada, Denmark, Dominica, El Salvador, France, Germany, Israel, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Panama, Portugal, Turkey, United Kingdom and United States.

[154] For the details of the rebellion and civil war in Liberia, see Clement E. Adibe, "Strategic Coercion in Post-Cold War Africa" in Lawrence Freedman (ed.), *Strategic Coercion: Concepts and Cases* (Oxford: Oxford University Press, 1998), 298-299. Also, "Suppression of Rebellion," *Keesing's* 36 (January 1990); "Increasing Scale of Revolt," *Keesing's* 36 (April 1990), "Rebel Successes Advance Into Monrovia," *Keesing's* 36 (July 1990).

[155] "Rebel Successes Advance Into Monrovia," *Keesing's* 36 (July 1990).

[156] David Wippman, "Enforcing the Peace: ECOWAS and the Liberian Civil War" in Lori Fisler Damrosch (ed.), *Enforcing Restraint: Collective Intervention in Internal Conflicts* (New York: Council on Foreign Relations Press, 1993), 159.

[157] For evaluation of the initial US reaction and inaction, see S. Byron Tarr, "Extra-Africa Interests in the Liberian Conflict" in Karl P. Magyar and Earl Conteh-Morgan (eds.), *Peacekeeping in Africa: ECOMOG in Liberia* (London: MacMillan Press Ltd., 1998), 155-160.

[158] "Civil War - Sending of ECOWAS Force - Large-scale Casualties," *Keesing's* 36 (August 1990).

reason of the action and thus their mandate was strictly confined to this goal.[159] The US also declared that its action "did not indicate or constitute any intention on the part of the US government to intervene militarily in the Liberian conflict."[160] The US intervention did not encounter opposition from the international community and none of the UN organs considered the US intervention as such.

Other recent interventions for the protection of nationals include the rescue operations of France and Belgium in Zaire in 1991, and the UK in Sierra Leone in 2000. In 1991, after riots broke out in Zaire,[161] France and Belgium sent troops to this country in September 1991. Both countries insisted that their intervention was purely humanitarian, seeking to protect and evacuate the 4,000 French and 10,000 Belgian nationals.[162] The French troops were withdrawn by October 30, and the Belgian forces by November 4.[163] Finally, the UK sent a force of paratroopers to evacuate British, EU, and Commonwealth nationals in Sierra Leone, when fighting broke out once again, after the July 1999 peace agreement between the government and rebel forces collapsed in May 2000, and, the rebels attacked UN peacekeepers[164] and seized hostages.[165] The British Defense Secretary, Geoff Hoon announced that in

---

[159] *New York Times*, 6 August 1990, A1.
[160] *Washington Post*, 6 August 1990, A1.
[161] For the account of political crisis in Zaire, see "Further Setbacks to Political Reform," *Keesing's* 37 (May 1991); "National Conference," *Keesing's* 37 (July 1991); "National Conference," *Keesing's* 37 (August 1991); and "Foreign Intervention," *Keesing's* 37 (September 1991).
[162] "Foreign Intervention," *Keesing's* 37 (September 1991).
[163] "Dismissal of Prime Minister," *Keesing's* 37 (October 1991); "Rival Governments Formation of New Cabinet," *Keesing's* 37 (November 1991).
[164] The UN Observer Mission in Sierra Leone (UNOMSIL), which was established by the Security Council Resolution 1181 in 1998 to monitor the security situation, was taken over by the UN Mission in Sierra Leone (UNAMSIL) in 1999, with a more robust mandate to "afford protection to civilians under imminent threat of physical violence." See SC Res. 1270, 22 October 1999. In 2000, the Security Council assigned the mission an expanded mandate under Chapter VII, thereby providing a legal framework for coercive action. See SC Res. 1289, 7 February 2000. for the UN action in Sierra Leone, see "Expansion of UN Force," *Keesing's* 46 (February 2000); "Action by UN Troops," *Keesing's* 46 (July 2000); "Security Developments," *Keesing's* 46 (August 2000).
[165] "Breakdown of Peace Agreement," *Keesing's* 46 (May 2000).

addition to organizing the evacuation of foreign nationals, the paratroopers would secure the airport for the UN until it was able to bring UNAMSIL (UN Mission in Sierra Leone) up to its authorized strength of 11,000. However, the UK Foreign Secretary, Robin Cook underlined that the paratroopers would remain outside UN control and would not be used in a combat role.[166] None of these interventions drew a notable international opposition. They did not become a subject of debate at the UN as well.

From the above appraisal of the UN reactions, at the outset, it seems that with respect to the protection of nationals as a legal ground for military intervention, the UN adheres to the restrictive view of the prohibition of the use of force as enshrined in Article 2(4) and the exception of self-defense in Article 51. The consistent reference by the UN organs, particularly by the General Assembly, to the principles of non-intervention in internal affairs and the inviolability of sovereignty, independence and territorial integrity in their resolutions condemning the interventions may be regarded as evidence of this conclusion. Nevertheless, this assessment has to be qualified by taking into account the specifics of the armed interventions in concern. In cases where the intervening countries exceeded the criteria of immediacy, necessity and proportionality and where the intervention in question had a political impact on the course or the outcome of the internal conflict, such as the 1960 Belgian intervention in the Congo, the US interventions in Grenada and Panama; the UN reaction has been one of strong condemnation. In these cases, the action carried out was hardly limited to protecting or rescuing nationals. Thus, the initial submission of protection of nationals was later accompanied with other legal justifications, such as with the

[166] *Ibid.*

consent of the local authority, with self-defense, with "restoration of order" or with a combination of more than one of these.[167] It follows that even intervening states recognize the limits of the use of force within the context of the need to protect nationals from an imminent danger, and accept that protection of nationals would not justify prolongation of the armed interventions or the presence of the intervening power.[168] In other cases where the military intervention was limited in scope, scale and time, the UN did not respond at all, let alone negatively. The French-Belgian intervention in Zaire (1978), the French intervention in Chad (1978), the US intervention in Liberia (1990), the French-Belgian intervention in Zaire (1991) and the UK intervention in Sierra Leone (2000) are exemplary of the UN inaction in such cases. It can be inferred from the lack of attempt of any country to bring the matter before the Security Council and the consequent non-consideration of the matter by none of the UN organs that these interventions were implicitly endorsed by the United Nations. Hence, in the final analysis, one can argue that the UN reactions substantially correspond to the limits on military intervention to protect nationals laid down by Waldock, namely necessity, proportionality and immediacy. Given that the intervening state(s) is invariably a Western state and the intervened is a Third World country, this stance may be considered as a manifestation of the "fear of abuse of this right" by the powerful states. The validity and viability of the protection of nationals in justifying limited and temporary use of force that meets the criteria of necessity, immediacy and proportionality is also evident in the statements of the states deploring the above interventions. The opposing arguments have been generally confined to the rejection of the existence of an exigency, and emphasized that

[167] It was only in Belgian intervention in the Congo in 1960 and the US intervention in Liberia in 1990 that the protection of nationals was invoked as the sole justification for the intervention.

protection of nationals constituted a pretext for stronger states to intervene in the affairs of weaker ones. As such, they have not denied the legality of the right in itself. Thus, the permissibility of intervention to protect nationals has been challenged as a matter of fact rather than as a matter of principle both by the states and the United Nations.

[168] Tanca, *Foreign Armed Intervention*, 121.

CHAPTER II:

HUMANITARIAN INTERVENTION

The final, and by far the most controversial justification for military intervention is that on humanitarian grounds. The issue has been immensely debated in the vast literature on this subject since the nineteenth century. The classical writers on the law of nations have generally stated that a war to punish injustice was a just war.[1] By the end of the nineteenth century, a majority of legal scholars had come to argue that a right of humanitarian intervention existed.[2] In its nineteenth century conception, the right of humanitarian intervention encompassed the right to protect one's own nationals as well.[3] However, since the twentieth century, the definition of humanitarian intervention has been confined to the use of force by a state or a group of states to protect citizens of the target state from widespread violations of human rights there.[4] In this respect, Oppenheim maintains that "by virtue of its personal and

---

[1] For example, Grotius subscribed to the view that if a government, although acting within its rights of sovereignty, violates the rights of humanity, the right of intervention may be lawfully exercised. See the section on the "Intellectual Roots of Non-Intervention" in Chapter I of Part I.

[2] Ian Brownlie, *International Law and the Use of Force by States* (London: Oxford University Press, 1963), 338.

[3] Funda Keskin, *Uluslararası Hukukta Kuvvet Kullanma: Savaş, Karışma ve Birleşmiş Milletler (The Use of Force in International Law: War, Intervention and the United Nations)* (Ankara: Mülkiyeliler Birliği Vakfı Yayınları, 1998), 125-126.

[4] For similar definitions of "humanitarian intervention," see for example, Adam Roberts, *Humanitarian Action in War*, Adelphi Paper 305 (New York: Oxford University Press, 1996), 19; Tom J. Farer, "An Inquiry into the Legitimacy of Humanitarian Intervention" in Lori Fisler Damrosch and David J. Scheffer (eds.), *Law and Force in the New International Order* (Boulder: Westview Press, 1991), 185; Sean D. Murphy, *Humanitarian Intervention, The United Nations in an Evolving*

territorial supremacy, a state can treat its own nationals according to discretion." However, he further notes that:

> "But there is a substantial body of opinion and of practice in support of the view that there are limits to that discretion and that when a state renders itself guilty of cruelties against and persecution of its nationals in such a way as to deny their fundamental human rights and to shock the conscience of mankind, intervention in the interest of humanity is legally permissible."[5]

As such, the key conditions of humanitarian intervention appear to be first, there must be immediate and extensive threat to fundamental human rights within the target state; and second, the purpose of the intervention must be limited to the protection of human rights. In this sense, humanitarian intervention is distinguished from intervention to protect nationals insofar as it entails "protection of the nationals of another state from inhuman and cruel treatment within their state."[6] As mentioned elsewhere, the supporters of the right to protect nationals abroad often base its validity on the right of self-defense, which is a form of self-help. In contrast, humanitarian intervention is not a self-help measure by definition,[7] and thus cannot be invoked in connection with the right of self-defense. Humanitarian intervention is also distinguished from intervention to promote self-determination. As discussed in the previous chapter, intervention to facilitate self-determination occurs on behalf of

---

World Order (Philadelphia: University of Pennsylvania Press, 1996), 11-12; Anthony Clark Arend and Robert J. Beck, *International Law and the Use of Force, Beyond the UN Charter Paradigm* (London. Routledge, 1993), 113; Ian Brownlie, "Humanitarian Intervention" in John Norton Moore (ed.), *Law and Civil War in the Modern World* (Baltimore: The Johns Hopkins University Press, 1974), 217.

[5] Hersch Lauterpacht (ed.), *L. Oppenheim, International Law: A Treatise, Vol. I – Peace* (London: Longmans, Green & Co., 1955), 312. A similar assertion is made by Thomas and Thomas. They explain that the right of a state to treat its citizens the way it pleases is limited by the "abuse of right doctrine," namely, "that if a state exercises a right in such a manner as to exceed its equitable limits, it becomes legitimate to employ courses that might not otherwise be justified in order to nullify its effects." See Ann Van Wyen Thomas and A. J. Thomas, Jr., *Non-intervention, The Law and Its Import in the Americas* (Dallas: Southern Methodist University Press, 1956), 384.

[6] Arend and Beck, *International Law,* 114. See also, Tom Hiller, *Sourcebook on Public International Law* (London: Cavendish Publishing Limited, 1998), 611.

a group of people who is struggling against the established regime by invoking the right to self-determination. By contrast, the humanitarian intervention aims not to create a new state as such, but only to protect the human rights within an existing state. Thus, in this sense, the action is "in the nature of a police measure."[8] In addition, while humanitarian intervention involves prior inhuman and cruel treatment in the target state, intervention to promote self-determination does not entail such precondition.[9] Lastly, the distinction between humanitarian intervention and intervention to facilitate self-determination is also evident in state practice. States advocating the permissibility of the use of force to promote self-determination "have been careful not to present this alleged right as an example of a wider right of humanitarian intervention. Rather, they have been "often the most vehement in condemning any intervention, humanitarian or otherwise, in the affairs of other states."[10]

Another distinguishing aspect of humanitarian intervention is the absence of the element of consent, which may exist or be alleged to exist, in cases of military interventions to protect nationals and to assist self-determination. Therefore, forcible intervention for humanitarian ends is the most controversial justification, for it is a conduct of use of force that most visibly violates the principles of sovereignty and non-intervention. Finally, unlike other justifications, humanitarian intervention involves questions of authorization. Since by definition, intervention for humanitarian ends concerns all humanity, the contention over its permissibility is

---

[7] Brownlie, "Humanitarian Intervention," 219.
[8] Brownlie, *International Law*, 338.
[9] Arend and Beck, *International Law*, 114.
[10] Michael Akehurst, "Humanitarian Intervention" in Hedley Bull (ed.), *Intervention in World Politics* (New York: Oxford University Press, 1984), 113.

significantly reduced where the humanitarian intervention expresses the collective will of the society of states through authorization by an international body.

In the light of the above preliminary observations about the concept of the humanitarian intervention, this chapter will assess the UN's approach to the question of the permissibility of unilateral military intervention for humanitarian ends. For this purpose, it will first explore the contentions regarding the legality of humanitarian intervention in general international law and in relation to the UN Charter. Secondly, it will scrutinize the military interventions, which are usually referred in the literature as examples of humanitarian intervention with respect to their outcomes rather than their justifications, in order to evaluate the states' convictions regarding the humanitarian concerns as a justification for unilateral military intervention. Finally, the chapter will look at the UN reactions to specific cases whereby humanitarian considerations were unequivocally raised. The representative cases fall under three categories: humanitarian interventions with dubious UN authorization, humanitarian interventions authorized retrospectively, and the humanitarian interventions with explicit UN authorizations. The cases will be analyzed individually with special emphasis on the state views regarding the validity of humanitarian claims as grounds for military intervention.

2. 1. THE LEGALITY OF HUMANITARIAN INTERVENTION

The contention over the legality of humanitarian intervention for the most part parallels the restrictive and counter-restrictive arguments in relation to the protection of nationals abroad.[11]

2. 1. 1. The Restrictive Approach

Under the restrictive approach, as discussed in the previous chapter, it is argued that Article 2(4) imposes a total ban on the use of force and Article 51 represents the only exception to this general prohibition.[12] In this context, Brownlie notes that the legal regime established by the United Nations Charter "rests on a suspicion of unilateral action by states."[13] Therefore, insofar as humanitarian intervention does not involve "individual or collective self-defense," the restrictive scholars argue, it would constitute an illegal use of force "against the territorial integrity and political independence of a state," and thus it is not rendered permissible by the terms of these Charter provisions.[14] Moreover, it is maintained that the reference to territorial

---

[11] It must be noted that the issue of legitimizing practice of humanitarian intervention has also been a subject of debate among the scholars of world politics and philosophy as well as policy-makers. For a succinct examination of pluralist and solidarist theories of humanitarian intervention, see for example, Nicholas J. Wheeler, *Saving Strangers, Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000), 21-52. For an overview of the philosophical debate between communitarians and cosmopolitans concerning humanitarian intervention, see Stephen A. Garrett, *Doing Good and Doing Well: An Examination of Humanitarian Intervention* (Westport, USA: Praeger Publishers, 1999), 23-39. For ethical views regarding humanitarian intervention, see Pierre Laberge, "Humanitarian Intervention: Three Ethical Positions," *Ethics and International Affairs* 9 (1995), 15-35.

[12] Michael Akehurst, *A Modern Introduction to International Law* (London: George Allen and Unwin, 1984), 219-221.

[13] Brownlie, "Humanitarian Intervention," 219.

[14] See for example, Brownlie, *International Law,* 339-341; and Nigel S. Rodley, "Collective Intervention to Protect Human Rights and Civilian Populations: The Legal Framework" in Nigel S. Rodley (ed.), *To Loose the Bands of Wickedness: International Intervention in Defence of Human Rights* (London: Brassey's, 1992), 21.

integrity, in Article 2(4) denotes "territorial inviolability." In this sense, any humanitarian intervention, however limited, would entail "a temporary violation of the target state's political independence and territorial integrity if it is carried out against that state's wishes."[15] In this respect, Henkin maintains that:

> "Clearly, it was the original intent of the Charter to forbid the use of force even to protect human rights or to install authentic democracy. Nothing has happened to justify deviations from that commitment...Surely the law cannot warrant any state's intervening by force against the political independence and territorial integrity of another on the ground that human rights are being violated, as indeed they are everywhere."[16]

In support of their arguments, the restrictive scholars usually refer to the principle of non-intervention as embraced by the General Assembly resolutions such as the *Declaration of Inadmissibility of Intervention in the Domestic Affairs of States*, which condemns the intervention in its widest terms,[17] and the *Declaration on Principles of International Law*, which reaffirms the inadmissibility of intervention in the domestic affairs of states.[18] They also cite the judgment of the International Court of Justice in the *Nicaragua* case as applicable to humanitarian intervention, in which the Court upheld that:

> "While the United States might form its own appraisal of the situation as to respect for human rights in Nicaragua, the use of force could not be the appropriate method to monitor or ensure such respect...The Court concludes that the argument

---

[15] Akehurst, "Humanitarian Intervention," 105. For the view that unilateral military intervention for humanitarian purposes violates the prohibition on use of force under Article 2(4), see also Lori Fisler Damrosch, "Commentary on Collective Military Intervention to Enforce Human Rights" in Damrosch and Scheffer (eds.), *Law and Force*, 215.

[16] Louis Henkin, "The Use of Force: Law and US Policy" in *Right* vs. *Might* (New York: Council on Foreign Relations Press, 1991), 61.

[17] GA Res. 2131 (XX), 21 December 1965. Paragraph 1 of the Declaration states that "no State has the right to intervene, directly or indirectly, for any reason whatever, in the internal and external affairs of any other State," and the seventh preambular paragraph declares that "armed intervention is synonymous with aggression."

[18] GA Res. 2625 (XXV), 24 October 1970. The Declaration repeats paragraph 1 of the GA Res. 2131 (XX), and the eight preambular paragraph states that "the practice of any form of intervention...violates the spirit and letter of the Charter."

> derived from the preservation of human rights in Nicaragua cannot afford a justification for the conduct of the United States."[19]

The supporters of the restrictive view also reject the examples of state practice in the pre-Charter period, to which advocates of the right of humanitarian intervention have appealed to show the existence of such a right in customary international law, as providing a clear basis on which to base such a right, for in these cases, humanitarian concerns are almost always mixed with other motives.[20] Some scholars add that the pattern of state practice in the post-Charter period also fails to demonstrate a customary legal right to humanitarian intervention.[21] In addition, restrictive scholars point out that the fundamental objective of the United Nations system is the maintenance of international peace and security.[22] In this respect, Farer for example, insists that other UN purposes "are permanently subordinated to the dominant purpose of maintaining international peace and security." He asserts that:

> "No state can claim to be advancing other purposes when it breaches the peace to promote interests, for they simply have no legitimate independent existence outside the context of international peace."[23]

---

[19] *ICJ Reports* (1986), para. 268. Some scholars also referred to the judgment of the Court in the *Corfu Channel* case. Although it did not touch directly on the legality of humanitarian intervention, the judgment is interpreted by the restrictive scholars "as condemning all intervention, self-protection, or self-help involving the use of force—including...for purposes of humanitarian intervention." Akehurst, "Humanitarian Intervention," 110; Francis A. Boyle, "Humanitarian Intervention Under International Law," *Review of International Affairs* 1:4 (2002), 49.

[20] For a thorough and skeptical survey of the history of "humanitarian intervention," see Brownlie, *International Law,* 338-342. See also, Brownlie, "Humanitarian Intervention," 221; Thomas Franck and Nigel Rodley, "After Bangladesh: The Law of Humanitarian Intervention by Military Force," *American Journal of International Law* 67:2 (1973), 281.

[21] Jack Donnelly, "Human Rights, Humanitarian Crisis, and Humanitarian Intervention," *International Journal* 48:4 (1993), 622.

[22] Akehurst, "Humanitarian Intervention," 105.

[23] Tom J. Farer, "Law and War" in Cyril E. Black and Richard A. Falk (eds.), *The Future of International Legal Order* Volume 3 (Princeton: Princeton University Press, 1971), 31. Elsewhere, Farer notes that given "the Charter's normative logic, its allocation of coercive jurisdiction, its omissions, as well as the preferences manifested by most participants in the drafting process and their immediately subsequent behavior," one should conclude that "the promotion of human rights ranked far below the protection of national sovereignty and the maintenance of peace as organizational goals." See Farer, "An Inquiry into the Legitimacy of Humanitarian Intervention," 190.

Finally, they point to the potential abuse of such a right.[24] In this respect, Henkin contends that admitting a legal right of humanitarian intervention may lead to its use "as the occasion or pretext of aggression." He further argues that since the violations of human rights are "all too common," if humanitarian intervention "were to be permissible to remedy them by the use of force, there would be no law to forbid the use of force by almost any state against almost any other."[25] Similarly, Falk observes that authorization of intervention to protect human rights "creates a manipulative nexus that can itself be used as a justification for an abusive intrusion upon the legitimate autonomy of another state."[26] Consequently, these scholars argue that the use of force to rectify a breach of an international obligation may result in "more harm than the breach of the international obligation; the cure is often worse than the disease."[27]

In conclusion, relying on these arguments, the restrictive view adheres to the proposition that unilateral action by a state in the territory of another state on the ground of protection of human rights is unlawful. However, it has to be noted that restrictive scholars also acknowledge permissible forms of humanitarian intervention under the existing law. Brownlie for example, maintains that action for protection of human rights may be undertaken by the Security Council under Chapter VII, in situations whereby violations of human rights generate a "threat to peace." Alternatively, regional action may be carried out upon authorization from the

---

[24] See generally, Franck and Rodley, "After Bangladesh," 275-305.
[25] Louis Henkin, *How Nations Behave: Law and Foreign Policy* (New York: Columbia University Press, 1979), 145.
[26] Falk, *Legal Order In a Violent World*, 161.
[27] Akehurst, "Humanitarian Intervention," 111. For a similar view, see Franck and Rodley, "After Bangladesh," 275, 300.

Security Council under Chapter VIII of the Charter, when instances of human rights deprivations threaten the peace of any given region.[28] In this respect, Falk remarks that "the renunciation of intervention" is not substituted by "a policy of nonintervention;" rather "it involves the development of some form of collective intervention."[29] From this judgment, Falk notes that the risk of manipulation of a right of humanitarian intervention is considerably reduced, if not eliminated, when "the decision to intervene is tied to the maintenance of peace and security and depends upon collective authorization" by an international organization. As a result, Falk holds that such an intervention by collective decision may be allowed "to protect men against severe abuses from their own state."[30]

2. 1. 2. The Counter-Restrictive Approach

The scholars who support the legality of humanitarian intervention submit mainly three arguments. First, some scholars argue that the promotion of human rights is as equally significant purpose of the Charter as the maintenance of international peace and security.[31] These scholars usually make references to the emphasis on the prominence of human rights and fundamental freedoms found in a number of places in the Charter.[32] For example, according to Reisman and McDougal, the Preamble's

---

[28] Brownlie, "Humanitarian Intervention," 226. For a similar view, see also, Akehurst, "Humanitarian Intervention," 106.
[29] Falk, *Legal Order In a Violent World*, 339.
[30] *Ibid.*, 162.
[31] See for example, Fernando R. Teson, *Humanitarian Intervention: An Inquiry into Law and Morality* (New York: Transnational Publications, 1988), 131; Richard B. Lillich, "Humanitarian Intervention: A Reply to Ian Brownlie and A Plea For Constructive Alternatives" in Moore (ed.), *Law and Civil War*, 240.
[32] The provisions typically referred to are the Preamble of the Charter and Articles 1, 55 and 56. The Preamble reaffirms "faith in fundamental human rights;" Article 1(3) cites "promoting and encouraging respect for human rights and fundamental freedoms" as one of the purposes of the United Nations; Article 55 underlines the UN objective of promoting "universal respect for, and observance

"repeated emphasis upon the common interests that the use of force for the urgent protection of such rights is no less authorized than other forms of self-help."[33] Hence, according to the counter-restrictive scholars, attaching protection of human rights equal weight with the maintenance of peace "would permit humanitarian intervention by states despite Article 2(4), when such intervention were consistent with human rights objectives" of the Charter.[34] A second argument in support of the legality of the humanitarian intervention relies on a narrow interpretation of Article 2(4). As elaborated within the framework of the protection of nationals, some scholars contend that as long as the use of force does not breach the territorial integrity and political independence of any state and is in consistent with the purposes of the United Nations, such uses of force would fall "below the 2(4) threshold," and thus would not contravene the Charter. It would follow from such assertion that military intervention limited exclusively to the protection of human rights would be legally permissible. For example, Lillich maintains that since humanitarian interventions by states are consistent with Charter purposes, and in fact may advance one of the major objectives of the UN in many situations, such interventions may be considered to infringe Article 2(4) "only if they are thought to affect the territorial integrity or political independence of the state against which they are directed."[35] In this respect, Teson posits that "a genuine humanitarian intervention" would not lead to "territorial conquest or political subjugation."[36] Similarly, Reisman and McDougal contend that:

---

of, human rights and fundamental freedoms," and Article 56 authorizes "joint and separate action [by Members] in cooperation with the Organization for the achievement of the purposes set out in Article 55."

[33] W. Michael Reisman and Myres McDougal, "Humanitarian Intervention to Protect the Ibos" in Richard B. Lillich (ed.), *Humanitarian Intervention and the United Nations* (Charlottesville: University Press of Virginia, 1973), 172.

[34] Lillich, "Humanitarian Intervention," 240.

[35] *Ibid.*, 236-237.

[36] Teson, *Humanitarian Intervention*," 131.

> "Since a humanitarian intervention seeks neither a territorial change nor a challenge to the political independence of the state involved and is not only not inconsistent with the purposes of the United Nations but is rather in conformity with the most fundamental peremptory norms of the Charter, it is a distortion to argue that it is precluded by Article 2(4)."[37]

Lillich further notes that except those justifications which exclusively rely upon Article 51, "any rationale allowing interventions to protect nationals also authorizes humanitarian interventions in general."[38] Moreover, the supporters of the right of humanitarian intervention assert that a broad construction of Article 2(4) would lead to an international legal system that protects tyrants.[39] In this respect, one ardent supporter of the legality of humanitarian intervention argues that intervention to displace tyrannical governments "is not only legally justified but morally required."[40]

Finally, those who support the legality of humanitarian intervention advance the argument that there was a customary right of humanitarian intervention in the pre-Charter period, which has revived in the post-1945 period. In this regard, the main premise is parallel to the one formulated within the context of the protection of nationals, in that although the United Nations was founded with a view to centralize the protection and enforcement of international rights, the fact that effective working of the UN enforcement mechanisms was frequently inhibited by the discord among the permanent members of the Security Council gives rise to the application of Article 2(4)'s prohibition of the use of force on the condition of effective UN response. In cases where the UN fails to do so, the argument goes, the customary law

---

[37] Reisman and McDougal, "Humanitarian Intervention to Protect the Ibos," 177.
[38] Lillich, "Humanitarian Intervention," 241.
[39] See for example, Teson, *Humanitarian Intervention*," 167.
[40] Anthony D'Amato, "The Invasion of Panama Was a Lawful Response to Tyranny" *American Journal of International Law* 84:2 (1990), 519.

revives and states are permitted to invoke the right of humanitarian intervention in appropriate situations.[41] For example, Reisman and McDougal suggest that human rights violations might become a "threat to the peace," and thus invoke Security Council's Chapter VII jurisdiction. However, if the Security Council fails to act, Reisman and McDougal argue that "the cumulative effect of Articles 1, 55, and 56 [would be] to establish the legality of unilateral self-help."[42] In response to the problem of abuse of the right of humanitarian intervention if deemed permissible, the counter-restrictive arguments maintain that any claim invoking a right of humanitarian intervention "will always require contextual analysis," and whether it is made "in good faith or abusively" will be judged by the appropriate international bodies, such as the Security Council or the International Court of Justice. Hence, since the validity of these claims can be established by a variety of international institutions, it will be wrong not to allow "claims which may in very restricted exceptional circumstances be regarded as lawful" just because they may be unjustly raised occasionally.[43]

Notwithstanding the counter-restrictive arguments, the fact remains that there exists no explicit provision in the UN Charter to support a right of unilateral humanitarian intervention by states. Nor does the body of international law appear to specifically incorporate such a right in any formal convention, or for that matter, in any international legal document so far.[44] As to customary international law, the right of humanitarian intervention seems to be at best ambiguous, given that the state practice

---

[41] Lillich, "Humanitarian Intervention," 247.
[42] Reisman and McDougal, "Humanitarian Intervention to Protect the Ibos," 174-175.
[43] Rosalyn Higgins, *Problems and Process: International Law and How We Use It* (New York: Oxford University Press, 1994), 247-248.
[44] Donnelly, "Human Rights, Humanitarian Crisis, and Humanitarian Intervention," 622.

in the pre-Charter period reveals the scope of abusing such a right.[45] Moreover, it is generally maintained that human rights are essentially matters of domestic jurisdiction by virtue of the principle of "sovereign equality" of all the UN members. Finally, state practice since 1945 provides for a few cases justified on humanitarian grounds. However, the mere fact that the Charter makes references to the subject of human rights indicates that such matters may at times become matters of legitimate international concern. For that matter, today human rights appear in several legal documents as well, such as the Universal Declaration on Human Rights and the UN Covenants, which give them an international status.[46] Qualifying human rights as such would in turn take those issues out of the confines of the terms of Article 2(7), namely the "domestic jurisdiction" limitation beyond the reach of the United Nations. More importantly, under the Charter, the Security Council may determine any situation of human rights violations as constituting a threat to international peace. The issue then, can no longer maintain immunity "either under the domestic jurisdiction clause or under the concept of sovereign equality, and becomes subject then to collective action by the organization."[47] In this sense, it can be argued that Article 2(7) does not constitute an impediment to action by the UN organs with regards to human rights. On the other hand, given the broad authority of the Security Council to respond to "threats to the peace," involvement of the Council as such might lead to authorization of states to take military action to enforce international human rights. As s result, it can be contended that by prohibiting the use of force, except for self-defense and collective use of force by the organization on the

[45] See Chapter I of Part I for state practice in the pre-Charter period.
[46] For detailed analysis of the global human rights regime, see for example, Jack Donnelly, "The Social Construction of International Human Rights" in Tin Dunne and Nicholas J. Wheeler (eds.), *Human Rights in Global Politics* (Cambridge: Cambridge University Press, 1999), 71-78.
[47] Thomas and Thomas, Jr., *Non-intervention*, 377.

occasions determined to constitute a threat to international peace, the UN Charter has curtailed unilateral right to intervene for humanitarian purposes.

2. 2. STATE PRACTICE IN THE POST-CHARTER PERIOD

Three cases typically appear on most of the scholars' list of examples of state practice with regard to humanitarian intervention. These are the Indian intervention in East Pakistan (1971), the Vietnamese intervention in Cambodia (1978) and the Tanzanian intervention in Uganda (1978). However, these instances are considered as examples of humanitarian intervention more with respect to their outcomes than in terms of the justifications presented by the intervening states. Although India and Tanzania made a few references to humanitarian concerns, none of them officially defended its action on the basis of the doctrine of humanitarian intervention.

India, for example, in addition to the principal justification of self-defense, in a number of Security Council debates, voiced the need to provide support to the Bengali people against the Pakistani assault.[48] However, at no time did India claim a right of humanitarian intervention. Rather, it consistently argued that it had used military force in self-defense.[49] The reactions to the Indian intervention revealed no support to the legality of humanitarian intervention. Not a single country claimed that India had a right to intervene militarily in order to rescue the people of East Pakistan. For example, among the opposing states, Pakistan, China and the United States

[48] UN Doc. S/PV.1606 (1971), 17-18; UN Doc. S/PV.1608 (1971), 27-28; UN Doc. S/PV.1611 (1971), 4-14.

contended that India had no right to interfere by force with Pakistan's treatment of the inhabitants of East Pakistan. Argentina and Tunisia deemed the Indian action as "intervention in the internal affairs of a state." Most statements in the General Assembly was also to the effect that the situation in East Pakistan was an internal one, to be settled by the Pakistani government, with no external interference. A number of representatives argued that one country's internal difficulties should not be used as a pretext for intervention from outside and voiced support for the principles of territorial integrity and non-interference in the internal affairs.[50]

Like India, when Vietnam invaded Kampuchea in 1978, which resulted in the ousting of Pol Pot regime, it did not claim a right of humanitarian intervention, but instead invoked the right of self-defense in response to Khmer Rouge aggression against Vietnam since 1975.[51] Despite the fact that horrendous human rights violations in Kampuchea had been well documented, no state pointed to the existence of a right of humanitarian intervention. On the contrary, several states contended that those violations did not justify Vietnam's intervention. For instance, the Norwegian representative stated that:

> "The Norwegian Government and public opinion in Norway have expressed strong objections to the serious violations of human rights committed by the Pol Pot Government. However, the domestic policies of that Government cannot—we repeat, cannot—justify the actions of Vietnam over the last days and weeks. The Norwegian Government firmly rejects the threat or use of force against the territorial integrity or political independence of any State."[52]

Similarly, France argued that:

---

[49] UN Doc. S/PV.1611 (1971), 9; UN Doc. S/PV.1613 (1971), 22.
[50] *UN Yearbook* (1971), 146-153.
[51] UN Doc. S/PV.2108 (1979), 12.

> "The notion that because a regime is detestable foreign intervention is justified and forcible overthrow is legitimate is extremely dangerous. That could ultimately jeopardize the very maintenance of international law and order and make the continued existence of various regimes dependent on the judgment of their neighbours. It is important for the Council to affirm, without any ambiguity, that it cannot condone the occupation of a sovereign country by a foreign power."[53]

Portugal expressed the same opinion by stating that despite the "appalling record of violation of the most basic and elementary human rights in Kampuchea," these considerations would not "justify the invasion of the territory of a sovereign State by the forces of another State."[54] Of the other states in the debate opposing to the Vietnamese action, the UK, the US, Australia, New Zealand and Japan made similar comments on the unacceptability of justifying a military action by the internal policies of a government.[55] All of the five ASEAN countries participating in the Council debate maintained that Vietnam's intervention was unjustifiable for any reason. Singapore directly addressed the issue of human rights violations in Cambodia, by arguing that "no [other] country has a right to topple the Government of Democratic Kampuchea, however badly that Government may have treated its people."[56] Among the other countries, which contended that a domestic situation could not justify a foreign intervention, were Bolivia, Jamaica, Nigeria, and Yugoslavia.[57]

---

[52] UN Doc. S/PV.2109 (1979), 2.
[53] *Ibid.*
[54] UN Doc. S/PV.2110 (1979), 3.
[55] UN Doc. S/PV.2110 (1979), 6 (UK and New Zealand); 7 (US); UN Doc. S/PV.2111 (1979), 2-3 (Japan), 3 (Australia).
[56] UN Doc. S/PV.2110 (1979), 5.
[57] UN Doc. S/PV.2109 (1979), 7 (Bolivia); UN Doc. S/PV.2111 (1979), 13-14 (Jamaica), 4 (Nigeria), 13 (Yugoslavia).

Finally, while Tanzania admitted its role in overthrowing President Amin of Uganda, it claimed that it had acted in response to President Amin's armed aggression.[58] The intervention did not become a subject of debate in the UN, and was not condemned by the OAU. A few African countries reacted against the Tanzanian military action. These countries, namely Sudan, Libya and Nigeria did not accept the Tanzanian claim of self-defense and accused Tanzania for interfering in Ugandan internal affairs.[59] The fact that Tanzanian intervention did not draw much criticism and UN reaction however, should not be taken to imply a support for the right of humanitarian intervention insofar as Tanzania sought to justify its action on a different ground.

Some scholars also refer to the 1979 French intervention in Central African Empire as an example of humanitarian intervention, since it resulted in the overthrow of a ruler with appalling human rights record.[60] Although France initially did not admit that it took part in the overthrow of the self-proclaimed Emperor Bokassa, and pretended that its forces arrived to Central Africa the next day after the coup at the request of the new government to help the new regime maintain order, it soon became apparent that the new government had in fact been brought to power by the French intervention. Notwithstanding well-known human rights violations including torture and murder of students, France did not raise a right of humanitarian

[58] "Continued Mediation Efforts," "Recognition of Lule Government by Other Countries," *Keesing's Record of World Events*, 25 (June 1979), http://www.keesings.com.
[59] See "Recognition of Lule Government by Other Countries," *Keesing's* 25 (June 1979).
[60] See for example, Akehurst, "Humanitarian Intervention," 98; Teson, *Humanitarian Intervention*," 175-178; Arend and Beck, *International Law*, 125-126; Murphy, *Humanitarian Intervention*, 107-108.

intervention, but instead relied on the request of the government in justifying its action. Neither the UN nor the OAU condemned the intervention.[61]

For the purpose of exploring the state conduct with regards to humanitarian intervention, the US interventions in Grenada and in Panama, both of which resulted in replacement of governments of the respective countries, are also cases in point. In both cases, the primary US justifications were fed by humanitarian claims as well. For example, during the discussion of Grenada in the Security Council, the US representative, Ambassador Kirkpatrick argued that action was necessary to restore law and order and to protect human rights.[62] In the Panama case, initially, the US made a distinction between legal justifications and objectives of the US action. In this respect, the US presented restoring democracy as a significant goal, but not a legal basis for the military action.[63] However, the legal adviser to the US State Department later appealed to the improvement of human rights as a legitimate objective of the international system. He declared that:

> "The United States does not accept the notion that a State is entitled to use force to overthrow the dictator of another State, however mad or cruel. The substantial respect accorded the doctrine of humanitarian intervention, however, reflects the fact that the advancement of human rights and of democratic self-determination are legitimate objectives of our international system. Panama presented a strong case for humanitarian intervention."[64]

---

[61] For the details of the French intervention in Central Africa, see "Overthrow of Emperor Bokassa by Mr Dacko - Re-establishment of Republic - French Role in Coup," *Keesing's* 25 (November 1979).
[62] UN Doc. S/PV.2491 (1983), 37.
[63] *UN Yearbook* (1989), 175.
[64] Abraham D. Sofaer, "The Panamanian Revolution: Diplomacy, War and Self-Determination in Panama," Remarks to the 84th Convention of the American Society of International Law, quoted in Thomas Ehrlich and Mary Ellen O'Connell, *International Law and the Use of Use* (Boston: Little, Brown and Co., 1993), 99.

The General Assembly deplored both US interventions. The Indian and Vietnamese interventions also arouse substantial negative reaction in the UN, expressed in the subsequent resolutions. However, since none of these interventions were officially and directly justified on humanitarian grounds, for purposes of appraising the legal status of humanitarian intervention, authoritative condemnation by the UN can be disregarded as not relevant. Rather, these examples are significant in demonstrating state behavior and statements, and in shedding light on the *opinio juris* of states. In this respect, the reactions to interventions, which arguably resulted in the advancement of human rights in the target states, evince intolerance of interventions on the basis of a state's domestic conduct. Moreover, the reluctance on the part of the intervening states to claim a right of humanitarian intervention further illustrates the states' skepticism regarding the permissibility of humanitarian intervention as well concerns with the possible erosion of "the rules of sovereignty and non-intervention by conceding such a right to individual states"[65]

2. 3. RECENT NTERVENTIONS JUSTIFIED IN HUMANITARIAN TERMS

2. 3. 1. Humanitarian Interventions Without UN Authorization

The most relevant cases for the purposes of this chapter are those unilateral military interventions undertaken with express humanitarian purposes. In this context, two cases merit close examination: the allied intervention in Iraq in 1991 and the NATO intervention in Federal Republic of Yugoslavia/Kosovo in 1999. The question is

[65] Hedley Bull, "Conclusion" in Bull (ed.), *Intervention in World Politics*, 193.

whether some parameters were set by the UN reactions to these particular instances of military interventions that might lead to gradual legitimation of forcible humanitarian interventions by a group of states outside any authorization by the Security Council.

2. 3. 1. 1. The Allied Intervention in Iraq (1991)

The debate over the legality of the unilateral humanitarian intervention revived with the allied operation in northern Iraq in April 1991, which aimed at creating a safe haven for the Kurdish people, who fled across the nearest borders into Turkey and Iran, in the face of a brutal military campaign launched by the Iraqi government in order to crush the Kurdish uprising in the immediate aftermath of the Gulf War in 1991.[66] On 8 April 1991, the European Union (EU) endorsed a plan, put forward by the UK Prime Minister John Major, for the creation of a UN 'enclave' in northern Iraq to protect Kurds from further attacks by the Iraqi government.[67] Initially staying aloof to the idea,[68] on 11 April, the US President Bush denied that there was disagreement between the US and its European allies over the issue of Kurdish enclaves. Consequently, on 16 April 1991, allied forces (US, British, French, later

---

[66] For a concise background of Kurdish crisis and allied intervention, see for example, Jane E. Stromseth, "Iraq's Repression of its Civilian Population: Collective Responses and Continuing Challenges," in Lori Fisler Damrosch (ed.), *Enforcing Restraint: Collective Intervention in Internal Conflicts* (New York: Council on Foreign Relations, 1993), 77-84; Francis Kofi Abiew, *The Evolution of the Doctrine and Practice of Humanitarian Intervention* (The Hague: Kluwer Law International, 1999), 145-147; Peter Malanczuk, "The Kurdish Crisis and Allied Intervention in the Aftermath of the Second Gulf War," *European Journal of International Law* 2:2 (1991), 1-10, http://www.ejil.org/journal/Vol2/No2/art6-01.html.

[67] "The Kurdish Crisis," *Keesing's* 37 (April 1991).

[68] On 9 April 1991, a White House spokesman stated that the US had "no position on the question of Kurdish "safe havens," and a State Department spokesman said that he was unable to give the proposal "specific endorsement." Notwithstanding, on 10 April 1991, the US demanded that Iraq cease all military activity north of 36th parallel, and warned that it would use force in response to any

joined by Dutch and Canadian) proceeded with establishing safe areas within Iraqi territory, without obtaining a formal UN authorization, and against the opposition of the Iraqi government.[69] In this respect, it is notable that earlier, the Secretary-General, Pérez de Cuéllar objected to the plan to deploy foreign troops in northern Iraq without Iraqi permission and the agreement of the Security Council.[70] Nonetheless, admitting these legal misgivings with regards to the allied operation, on 16 April, President Bush stated that:

> "Some might argue that this is an intervention into the internal affairs of Iraq. But I think the humanitarian concern, the refugee concern, is so overwhelming that there will be a lot of understanding about this."[71]

The Secretary-General's reservation nevertheless gained ground after the UN and Iraq signed a Memorandum of Understanding (MOU) on 18 April 1991, allowing the UN to oversee a civilian "humanitarian presence" throughout Iraq.[72] On 25 May 1991, Iraq consented to the presence of 500 lightly-armed UN Guard Contingent in Iraq by signing an Annex to the MOU on the condition of withdrawal of coalition troops.[73] The departure of allied soldiers was completed on 15 July 1991, but a

---

Iraqi military interference in international relief efforts for the Kurds. See "The Kurdish Crisis," *Keesing's* 37 (April 1991).

[69] It has to be noted that on 10 April 1991, the US and its allies declared a "no-fly zone" in the north of the 36th parallel, followed by a second one in southern Iraq below the 32nd parallel on 26 August 1992. The US justified the second "no-fly zone" by referring to the Security Council Resolution 688, which made no specific remark on southern Iraq. See George Bush, Remarks on Hurricane Andrew and the Situation in Iraq and an Exchange with Reporters, 26 August 1992, *Public Papers of the Presidents of the United States: George Bush*, vol. 2, (Washington DC: US Government Printing Office, 1993), 1430.

[70] "The Kurdish Crisis," *Keesing's* 37 (April 1991).

[71] George Bush, Remarks on Assistance for Iraqi Refugees and a News Conference, 16 April 1991, *Public Papers of the Presidents of the United States: George Bush*, vol.1 (Washington DC: US Government Printing Office, 1992), 379.

[72] UN Doc. S/22663 (1991), 2.

[73] *Ibid.*, 6-7.

multinational rapid-deployment force was set up in Turkey, in order to deter Saddam's possible further actions against the Kurds.[74]

The key element in justification of the allied intervention in Iraq was the humanitarian considerations in general, and the Security Council Resolution 688, in particular, which was adopted on 5 April 1991, in the Council meeting convened in response to the Turkish and French request for the discussion of the massive refugee flow comprising almost a million Kurdish in the north and five-thousand Shiites in the south.[75] For example, in defending the allied action, President Bush stated that *Operation Provide Comfort* was "consistent with the United Nations Security Council Resolution 688."[76] Similarly, John Major claimed that Resolution 688 provided the legal framework for such an intervention.[77] On the other hand, Resolution 688 also marked the beginning of a debate within the Council regarding the extent of the Council's interventionist role regarding internal affairs of states. Therefore, an examination of the resolution itself as well as the issues raised in the Security Council during its adoption is essential in assessing its precedent-setting value with respect to both the right of humanitarian intervention and the Organization's conception of the "domestic jurisdiction" limitation of Article 2(7).

Resolution 688 condemned "the repression of the Iraqi civilian population in many parts of Iraq, including most recently in Kurdish populated areas, the consequences

---

[74] Stromseth, 'Iraq's Repression of its Civilian Population," 92.
[75] See letter to the President of the Security Council from the representative of Turkey, UN Doc. S/22435 (1991); letter to the President of the Security Council from the representative of France, UN Doc. S/22442 (1991).
[76] Lawrence Freedman and David Boren, "'Safe Havens' for Kurds in Post-War Iraq" in Rodley (ed.), *To Loose the Bands of Wickedness,* 54.
[77] Wheeler, *Saving Strangers*, 152.

of which threaten international peace and security." It further insisted that Iraq "allow immediate access by international humanitarian organizations to all these in need of assistance."[78] While Resolution 688 was the least widely supported of all the resolutions adopted in response to Iraq's invasion of Kuwait,[79] it certainly reflected the growing international condemnation of Iraq's treatment of its Kurdish populations.[80] From the statements in the Security Council during the adoption of Resolution 688, it can be inferred that the central issue in concern was whether the Council action to address Iraqi repression of its civilians would violate Article 2(7) that proscribes intervention in matters "essentially within the domestic jurisdiction" of states in particular. For example, while explaining the Turkish position before the vote, the Turkish Ambassador, Mr. Aksin argued that "the scale of human tragedy and the its international implications" requires the Security Council "to take urgent and forceful action to secure an immediate cessation of the repression of the inhabitants of this area." However, Mr. Aksin also explicitly noted that Turkey's call for a Security Council meeting should by no means considered as interference in Iraq's internal affairs and that Article 2(7) "should be scrupulously observed." In this respect, Mr. Aksin affirmed Turkey's firm support for the "independence, sovereignty and integrity of Iraq."[81] Similarly, the Iranian Ambassador emphasized that massive refugee flows attached an international dimension to the crisis in Iraq,

---

[78] SC Res. 688, 5 April 1991. The draft resolution was submitted by France and Belgium and co-sponsored by the United Kingdom and the United States. The resolution was adopted by 10 votes in favor (Belgium, Austria, the Ivory Coast, Ecuador, France, Romania, Soviet Union, UK, USA, and Zaire), 3 against (Cuba, Yemen, and Zimbabwe), with 2 abstentions (China and India).

[79] Rodley, "Collective Intervention to Protect Human Rights and Civilian Populations," 29.

[80] As to international reaction, on 5 April 1991, a NATO statement, accusing the Iraqi government of "massive human rights violations," demanded that "every pressure ... be brought to bear to bring the Iraqi authorities to stop the repression without delay." Germany's Foreign Minister, Hans-Dietrich Genscher, described Iraq's actions as 'genocide' on 5 April 1991, and on 13 April 1991 called for a trial of President Saddam Hussein for "crimes against humanity." According to reports, Australian Prime Minister, Bob Hawke also urged for international action to help the Kurds. See "The Kurdish Crisis," *Keesing's* 37 (April 1991).

"threatening the security of the neighbouring countries and presenting the potential to further destabilize inter-State relations" in the region. Thus, he argued, it was the magnitude of the problem of refugees that necessitated immediate Security Council measures.[82]

Those voted against the resolution, as well as Iraq, invariably argued that human rights issues and humanitarian concerns were beyond the competence of the Security Council, and that their discussion would violate Article 2(7). For example, the Iraqi representative maintained that the draft resolution in question was "illegitimate intervention in Iraq's internal affairs and a violation of Article 2 of the Charter of the United Nations, which prohibits intervention in the internal affairs of other States."[83] The representative of Yemen denied that the humanitarian situation in Iraq presented a threat to international peace and security, and thus claimed that addressing the political developments within Iraq was not "within the competence of the Security Council" given Article 2 of the Charter.[84] He further stated that the draft resolution would set a "dangerous precedent" by opening the way for the Council to address the internal affairs of countries. In a similar line of reasoning, the Zimbabwe Ambassador asserted that the situation in Iraq represented a "domestic political conflict," therefore lies outside the Council's competence. Acknowledging the problems caused by the humanitarian situation and the flow of refugees to the neighboring states, he suggested that these could be "addressed by the appropriate organs of the United Nations."[85] Finally, the Cuban Ambassador was also fervent in

---

[81] UN Doc. S/PV.2982 (1991), 7-8.
[82] *Ibid.*, 13-15.
[83] *Ibid.*, 17.
[84] *Ibid.*, 27.
[85] *Ibid.*, 31-32.

considering the issue as interference to internal matters, and stated that the Security Council "simply has no right to violate the principle of non-intervention."[86]

The abstainers, on the other hand, recognized that there was an international aspect involved in the issue at hand. However, like the opponents, they underlined that these should be settled through appropriate channels. Speaking after the vote on the resolution, the Chinese representative, for example, explained the Chinese abstention in terms of the complexity of the matter, for it involved not only international aspects but also internal affairs of a country. Expressing sympathy "for the difficulties confronting Turkey and Iran" as a result of the influx of refugees, the Security Council, Chinese Ambassador argued, should not "take action on questions concerning the internal affairs of any State."[87] For its part, India claimed that the Security Council would have been competent to address the humanitarian crisis in Iraq only if the Iraqi use of force had resulted "in a clear threat to international peace and security."[88] Indian Ambassador further asserted that the Council should at all times respect the sovereignty and territorial integrity of states, which is a "cardinal principle of international relations."[89]

Finally, the supporting statements, by emphasizing the transboundary repercussions of Iraq's oppression of its civilian population for international security, carefully balanced the role of the Security Council in the matter with the principle of non-interference in the internal affairs of Iraq. For instance, the representative of Romania maintained that although the repression of Iraqi population was a legitimate

---

[86] *Ibid.*, 46.
[87] *Ibid.*, 54-56.
[88] *Ibid.*, 62.
[89] *Ibid.*, 63.

international concern, the Iraqi situation should be considered to be "a special case in the aftermath of the Gulf War." Therefore, Romania argued, the resolution "should not create a precedent that could be used ... in the future for political purposes."[90] Similarly, the representative of Ecuador stated that the Security Council was competent to take an action since the use of force was "extended up to the borders of two of those neigbouring countries" and the pressures on their borders caused by the displaced people constituted a threat to international peace and security. Nevertheless, he made clear that his government would not have supported the Council action, were it a "case of violation of human rights by a country within its own frontiers."[91] In a similar vein, representatives of Belgium, Zaire, Austria, the Ivory Coast, and the Soviet Union stressed that their support for Resolution 688 was by no means an attempt to undermine the principle of non-intervention. In this respect, the Soviet Ambassador for example, asserted that the "sovereignty, territorial integrity and political independence of Iraq must be ensured."[92] The US representative took a parallel position by affirming that the phenomenon in question was a specific case, which arose "in the aftermath of the Gulf crisis" and underlined that it was not "the role or intention of the Security Council to interfere in the internal affairs of any country."[93] He further emphasized that it was the "transboundary impact of Iraq's treatment of its civilian population" that threatened regional stability.[94] In addition to these cautious arguments, one should also note the British and the French statements in the Security Council, which stressed primarily humanitarian concerns. Britain for example, referring to the example of South

[90] *Ibid.*, 24-25.
[91] *Ibid.*, 36.
[92] *Ibid.*, 61.
[93] *Ibid.*, 57.
[94] *Ibid.*, 58.

Africa,[95] claimed that human rights were "not essentially domestic," and thus application of Article 2(7) was not relevant.[96] The French representative, on the other hand, argued that "violations of human rights" might become "a matter of international interest when they take on such proportions that they assume the dimension of a crime against humanity."[97] Nevertheless, it should be noted that these arguments to the effect that internal human rights situation is within the Organization's jurisdiction were raised after the vote, and thus can be assumed not to have played a role in the adoption of the resolution.

Overall, the arguments put forward by all states expose the ever-present tension between sovereignty and non-intervention on one hand, and the protection of human rights on the other. Insofar as the supporting states based the legitimacy of the Security Council action with regard to an internal matter on the 'outcomes' of the Iraqi treatment of its population, and took a rather cautious approach by emphasizing the principle of non-intervention and by characterizing the situation as a 'special' case, their arguments do not appear to be dissimilar to those advanced by the opposing states in essence. More precisely, it can be argued that states do not seem to

---

[95] The treatment of people of Indian origin in South Africa and later the wider question of apartheid became subjects of discussion in the General Assembly as early as 1946 and 1952. The Security Council did not find a general threat to the peace by the apartheid regime in South Africa, but recognized that the situation in South Africa had "led to international friction," which, "if continued, might endanger international peace and security." SC Res. 134, 1 April 1960. The Council adopted many resolutions of a recommendatory nature in relation to the system of apartheid in South Africa, including a call for voluntary arms embargo. SC Res. 569, 26 July 1985. It is interesting to note that during the consideration of the situation in South Africa in 1960, Britain and France, as opposed to their positions in the case of Iraq in 1991, argued that the issues in question were within South Africa's domestic jurisdiction, and thus outside the Council's purview. See *UN Yearbook* (1960), 143. For the Security Council actions regarding the apartheid regime in South Africa, see Sydney D. Bailey, *The UN Security Council and Human* Rights (New York: St. Martin's Press, 1994), 9-13.

[96] UN Doc. S/PV.2982 (1991), 64-65. In response to the apartheid system in South Africa, the Security Council, invoking Chapter VII, imposed a mandatory embargo on military and nuclear collaboration with South Africa in 1977. See SC Res. 418, 4 November 1977.

[97] UN Doc. S/PV.2982 (1991), 53.-

view violations of human rights in itself as a situation that warrants a Council action. This is also evident in the language of Resolution 688. While condemning the internal repression of civilian population, the resolution explicitly places the human rights crisis in perspective by deeming "its external consequences" as constituting a threat to international peace and security.[98] Thus, Resolution 688 cannot be taken to authenticate the internal human rights violations, without international repercussions, as threats to international peace and security.[99] As a result, it appears that the external implications, rather than the human rights violations themselves, constituted the main argument in overcoming the limitation of "domestic jurisdiction" in Article 2(7) and condemning Iraq with respect to its internal policies. Nevertheless, one can argue that the significance of Resolution 688 in connection to Article 2(7) lies in the fact that it represents the first time, other than the case of South Africa, that the Security Council had demanded betterment in the human rights situation of a member state as a contribution to the improvement of international security.[100]

On the other hand, despite the language of a threat to "international peace and security" -the principal terminology that enables enforcement action under Chapter VII- Resolution 688 was not explicitly invoked under Chapter VII and did not authorize military enforcement action as such. Thus, although the resolution requested Iraq to allow a humanitarian mission on its territory, it remains doubtful whether its terms could authorize a third state intervention in Iraq without its consent. Given the narrow scope of the resolution with no mention of collective

[98] See the first operative paragraph of SC Res. 688, 5 April 1991.
[99] For a similar view, see for example, Malanczuk, "The Kurdish Crisis and Allied Intervention in the Aftermath of the Second Gulf War," 4.
[100] See the second operative paragraph of SC Res. 688, 5 April 1991.

enforcement measures, Resolution 688 cannot be regarded as evincing the UN's endorsement of unilateral military intervention for humanitarian purposes. Furthermore, with the exception of those of Britain and France, none of the views expressed in the Council suggests a right of humanitarian intervention or an international duty to redress human rights violations. The cautious wording of the statements and the absence of an unequivocal reference to a right of humanitarian intervention may be interpreted as the states' uneasiness with the probability of setting a precedent in this regard –a point which was in fact underlined explicitly by some states. Therefore, it remains doubtful whether the allied powers would have undertaken a military intervention for humanitarian concerns, had the violations of human rights occurred in any other circumstances than as a result of the Gulf War. For that matter, it should be recalled that the Iraqi use of chemical weapons against the Kurds in 1987, which resulted in the death of 180,000 people did not bring about a similar humanitarian reaction. In this respect, Roberts notes:

> "The action [Operation Provide Comfort] happened in the immediate aftermath of a war, in circumstances in which the coalition powers had considerable reason to feel responsible for the plight of the refugees."[101]

Consequently, it will not be wrong to argue that given its limited legal basis, and the special circumstances under which it was undertaken, the allied intervention by no means signifies a turning-point in the permissibility of unilateral humanitarian intervention.[102] Rather, one can argue that the significance of the Council action and

---

[101] Adam Roberts, "Humanitarian War: Military Intervention and Human Rights," *International Affairs* 69:3 (1993), 437. Roberts expresses the same view elsewhere. See Roberts, *Humanitarian Action in War*, 25.

[102] In this respect, James Mayall concludes that: "it would be imprudent in practice, and wrong in theory, to generalize from the international obligations towards the Kurds in favour of an international enforcement mechanism for human rights wherever they are abused." Similarly, Freedman and Boren warn that "it would be unwise to build on the safe havens case," while Rodley notes Resolution 688 "is a fragile straw in the wind for future action." James Mayall, "Non-intervention, Self-determination

the following allied action essentially lies in altering the terms of the debate on forcible humanitarian intervention, for it led to a shift from Article 2(4) to Article 2(7) as the main focus of discussion.[103]

Finally, it must be pointed out that thus far, no Security Council member, who had voted in favor of Resolution 688, publicly questioned whether the *Operation Provide Comfort* was in accord with the resolution.[104] In addition, there was no General Assembly resolution issued, condemning the allied intervention in Iraq. However, interpreting the absence of a negative UN reaction as a sign of tacit endorsement of the allied operation as a permissible humanitarian intervention does not appear plausible in this case, considering the eventual UN's sponsorship of the mission and the consent given by the Iraqi government. In this respect, the following observation by Shaw remains enlightening:

> "It is not inconceivable that in some situations the international community might refrain from adopting a condemnatory stand where large numbers of lives have been saved in circumstances of gross oppression by a state of its citizens due to an outside intervention. This does not, of course, mean that it constitutes a legitimate principle of international law."[105]

---

and the 'New World Order'," *International Affairs* 67:3 (1991), 428; Freedman and Boren, "'Safe Havens' for Kurds in Post-War Iraq," 83; Rodley, "Collective Intervention to Protect Human Rights and Civilian Populations," 79. For an opposite view that Resolution 688 and the action that followed was a watershed, see for example Jarat Chopra and Thomas G. Weiss, "Sovereignty is No Longer Sacrosanct: Codifying Humanitarian Intervention," *Ethics and International Affairs* 6 (1992), 96. For a more cautious conclusion that "international law no longer forbids military intervention altogether," see Christopher Greenwood, "Is There a Right of Humanitarian Intervention?," *The World Today* 49:2 (1993), 40.

[103] Oliver Ramsbotham and Tom Woodhouse, *Humanitarian Intervention in Contemporary Conflict: A Reconceptualization* (Cambridge: Polity Press, 1996), 79.

[104] Wheeler, *Saving Strangers*, 140.

[105] Malcolm N. Shaw, *International Law* (Cambridge: Grotius Publications Limited, 1991), 725.

2. 3. 1. 2. NATO intervention in Federal Republic of Yugoslavia/Kosovo (1999)

One other representative case of unilateral humanitarian intervention without authorization is NATO's intervention in Federal Republic of Yugoslavia (FRY) in response to atrocities carried out by the Milosevic regime in Kosovo. The tension in Kosovo reached its peak in February 1998, when the Serbian authorities launched a violent onslaught against the separatist Kosovo Liberation Army (UCK).[106] The continuation of the conflict raised strong international condemnation and started a debate in the West whether force should be threatened or used to prevent another tragedy in the Balkans.[107] The first Security Council resolution regarding Kosovo was adopted in March 1998. By this resolution, the Council imposed an arms embargo on both parties, and called upon the FRY and the leadership of Kosovar Albanians to enter into meaningful dialogue for a peaceful settlement of internal strife.[108] Although no member voted against the resolution, Russia and China (who abstained) expressed their reservations about the resolution, which in their view, constituted intervention in the matters within the "domestic jurisdiction." The Russian representative stated that Russia had regarded "recent events in Kosovo as the internal affair of the Federal Republic of Yugoslavia."[109] China supported this in its statement, and added that were the Security Council to intervene in ethnic affairs within states "without a request from the country concerned, it may set a bad

---

[106] On the history of Kosovo and its rule by Serbia, see Noel Malcolm, *Kosovo: A Short History* (London: Macmillan, 1998). For the background of the conflict, see Lawrence Freedman, "Victims and Victors: Reflections on the Kosovo War," *Review of International Studies* 26:3 (2000), 345-348. Also, "Ongoing Conflict in Kosovo," *Keesing's* 44 (January 1998); "Start of Violence," "Serious Unrest in Kosovo," "Continued Serb Crackdown," *Keesing's* 44 (March 1998).

[107] For the immediate reaction to Serbian attacks, see "Immediate Reaction to Killings," *Keesing's* 44 (March 1998).

[108] SC Res. 1160, 31 March 1998. For other sanctions imposed by the Contact Group and the EU, see "Imposition of UN's Arms Embargo on FRY – Other Sanctions," *Keesing's* 44 (April 1998).

precedent and gave wider negative impacts."[110] In contrast to this position, majority of the states were of the view that the human rights violations in Kosovo had given rise to legitimate international concern, and thus no longer could be described as an "internal matter," which in turn justified the Security Council's invoking the powers granted to it under Chapter VII.[111] However, no state lent support to the secessionist claims of the Kosovar Albanians and the resolution reaffirmed the territorial integrity of the FRY.

In September 1998, in response to the growing civilian casualties,[112] the Security Council adopted Resolution 1199, which "affirm[ed] that the deterioration of the situation in Kosovo constitutes a threat to peace and security in the region" and, under Chapter VII, demanded a ceasefire and action to improve the humanitarian situation.[113] The Council warned that "should the concrete measures demanded in this resolution not be taken, [it would] consider further action and additional measures to maintain and restore peace and stability in the region." Russia reluctantly approved the resolution, but speaking before the vote, it underlined that this resolution did not authorize military action against the FRY.[114] Also speaking before the vote, the Chinese representative asserted that China could not support the draft resolution, since it did not view "the situation in Kosovo as a threat to international peace and security." He reiterated that Council's involvement in a dispute without a request by the country in question "would cerate a bad precedent."

---

[109] UN Doc. S/PV.3868 (1998), 10.
[110] *Ibid.*, 11-12.
[111] See generally, UN Doc. S/PV.3868 (1998).
[112] For the details of the developments in Kosovo after the imposition of arms embargo, see "Other Kosovo Developments" (May 1998); "Continued Violence in Kosovo" (July 1998); "Serbian Military Offensive in Kosovo" (July 1998); "Continued Fighting in Kosovo" (August 1998), *Keesing's* 44..
[113] SC Res. 1199, 23 September 1998.

He further argued that the draft resolution had invoked Chapter VII "all too indiscreetly in order to threaten FRY."[115]

Attempts at bringing about a negotiated withdrawal of Serbian troops from Kosovo, backed by repeated threats of NATO military strikes against the FRY,[116] were obstructed by Serbian President Milosevic.[117] On 13 October 1998, NATO finally approved action for air strikes and justified it in terms of Resolution 1199. In a press conference at NATO Headquarters in Brussels, the then NATO Secretary-General Javier Solana declared:

> "The Allies believe that in the particular circumstances with respect to the present crisis in Kosovo as described in UNSC [UN Security Council] Resolution 1199, there are legitimate grounds for the Alliance to threaten, and if necessary, to use force."[118]

However, it's clear from the statements of Russia, China and the United States during the adoption of Resolution 1203 in October 1998, that the issue of the use of force remained highly troublesome. The resolution reiterated the Council's earlier resolutions on Kosovo, and passed by thirteen votes, with Russia and China abstaining.[119] During its adoption, while the US asserted that NATO "had the authority, the will and the means to resolve the issue,"[120] Russia emphasized that the resolution did not contain any provision that "would directly or indirectly sanction

---

[114] UN Doc. S/PV.3930 (1998), 3.
[115] *Ibid.*, 3-4.
[116] The West warned Milosevic as early as June to end the fighting in Kosovo. "Protests Over Violence – Show of Force by NATO" (July 1998); "Show of Force by NATO" (August 1998), *Keesing's* 44.
[117] See "Preparations for Military Strikes – Diplomatic Efforts" (October 1998), *Keesing's* 44.
[118] Javier Solana, Press Conference at NATO Headquarters in Brussels, 13 October 1998, http://www.nato.int/docu/speech/1998/s981013b.hm.
[119] SC Res. 1203, 24 October 1998.
[120] UN Doc. S/PV.3937 (1998), 15.

the automatic use of force."[121] Similarly, China maintained that NATO's activation order was a regrettable development, because "the decision was made unilaterally, without consulting the Security Council or seeking its authorization," and this "created an extremely dangerous precedent in international relations." The Chinese representative further expressed that the resolution adopted did not "entail any authorization to use force or threaten to use force against the FRY."[122] The issue of NATO's authority to take military action against the FRY appeared to be disturbing to other Council members as well, who in supporting the resolution voiced strong concerns regarding the legal basis of any NATO military action. For example, Costa Rica argued that "any action which implies the use of force –with the very limited exception of the right of legitimate defense- requires clear authorization by the Security Council for each specific case." He further asserted that "the Security Council alone can determine whether there has been a violation of its resolutions" and "can authorize the use of force to ensure compliance with its resolutions."[123] In a similar vein, Brazil noted that the authority to decide whether or not its resolutions were being complied with laid in the Security Council. In this respect, he underlined that the Charter allows the resort to force by "non-universal" organizations "only on the basis either of the right to legitimate self-defense, as stipulated in Article 51, or through the procedures of Chapter VIII, which imposes on them the obligation of seeking Security Council authorization beforehand."[124]

---

[121] *Ibid.*, 11.
[122] *Ibid.*, 14.
[123] *Ibid.*, 6-7.
[124] *Ibid.*,10-11.

Notwithstanding the opposition to NATO's unilateral use of force without authorization from the Security Council, following the failed attempts to reach an agreement in Rambouillet in February 1999 and later in Paris in March 1999, NATO commenced air strikes against the Former Republic of Yugoslavia (FRY) on 24 March 1999.[125] Javier Solana put forward three reasons for NATO's action. First, he agued, NATO acted to stop the humanitarian tragedy. Second, he noted, the failure of all diplomatic initiatives led to Alliance's military action. Finally, he maintained, NATO acted to prevent a further destabilization in the Balkans caused by the Milosevic's brutal campaign against the Kosovar Albanians.[126] In general, NATO governments advanced the argument that overwhelming humanitarian necessity justified military intervention.[127] In this respect, the UK Prime Minister Tony Blair emphasized the need to protect Kosovar Albanians and contended that the choice was to do something or do nothing.[128] An additional argument in support of the legitimacy of military action was that Kosovo was indeed a threat to international peace and security, as confirmed by the Security Council resolutions. Both President Clinton and Tony Blair pointed out that a large flow of refugees from Kosovo could

---

[125] See "Rombouillet Peace Talks" (February 1999); "Events Prior to Second Round of Peace Talks" (March 1999); "Second Round of Peace Talks" (March 1999); "Deterioration in Security Situation" (March 1999); "Final Holbrooke Mission" (March 1999); "Launch of Operation Allied Force" (March 1999); "NATO Air-strikes on Yugoslavia" (March 1999), *Keesing's* 45.

[126] Javier Solana, "NATO is justified and determined," *New Perspectives Quarterly* 16:3 (1999), 49-50.

[127] See for example the note circulated to NATO allies in October 1998 by the UK Foreign and Commonwealth Office, which maintains that "Security Council authorization to use force for humanitarian purposes is now widely accepted (Bosnian and Somalia provided firm legal precedents)...But force can also be justified on the grounds of overwhelming humanitarian necessity without a UN Security Council resolution...There is convincing evidence of an impending humanitarian catastrophe [in Kosovo]...The UK's view is therefore that, as matters now stand and if action through the Security Council is not possible, military intervention by NATO is lawful on the grounds of overwhelming humanitarian necessity." One-page note by UK Foreign and Commonwealth Office of 7 October 1998: "FRY/Kosovo: The Way Ahead: UK View on Legal Base for Use of Force," quoted in Adam Roberts, "NATO's 'Humanitarian' War over Kosovo," *Survival* 41:3 (1999), 106. For a discussion of the arguments advanced by individual NATO members, see Catherine Guicherd, "International Law and the War in Kosovo," *Survival* 41:2 (1999), 25-29.

destabilize the neighboring countries and lead to a wider war.[129] In the emergency session of the Security Council on 24 March 1999, Russia, China, Belarus, and India opposed NATO's action as constituting a violation of the Charter,[130] while the NATO governments reiterated their arguments in that the action had been undertaken in the face of FRY's violation of legal obligations imposed by the related resolutions, and it was a response to a "humanitarian catastrophe."[131] In particular, the UK representative argued that the action was justified "as an exceptional measure to prevent an overwhelming humanitarian catastrophe."[132] Among the NATO states, the Dutch representative explicitly acknowledged that a Security Council "should be involved in any decision to resort to the use of force." However, he asserted, "if due to one or two permanent members' rigid interpretation of the concept of domestic jurisdiction, such a resolution is not attainable, we cannot sit back and simply let the humanitarian catastrophe occur."[133] On the other hand, some non-NATO members gave a less enthusiastic approval of NATO action. For example, Gambia pointed out that the "exigencies" of the situation justified NATO action.[134] Malaysia stated that the as a matter of principle the use of force should be "a recourse of last resort, to be sanctioned by the Security Council," and regretted that due to the irreconcilable differences within the Security Council, it had "been necessary for measures to be taken outside of the Council."[135] On 26 March 1999, the Security Council rejected the draft resolution proposed by Russia, Belarus and India, condemning NATO's

---

[128] Tony Blair, text of British Prime Minister Tony Blair's statement on Kosovo bombing, *New York Times*, 24 March 1999.
[129] William Jefferson Clinton, President Clinton's address on air strikes against Yugoslavia, *Washington Post*, 24 March 1999, A34; Tony Blair, text of British Prime Minister Tony Blair's statement on Kosovo bombing, *New York Times*, 24 March 1999.
[130] UN Document S/PV.3988 (1999), 2-4 (Russia), 12-13 (China), 15 (Belarus), 15-16 (India).
[131] *Ibid.*, 4-5 (US), 5-6 (Canada), 8 (Netherlands), 8-9(France); 11-12 (UK).
[132] *Ibid.*, 12.
[133] *Ibid.*, 8.

action as a breach of the UN Charter, by twelve votes to three (Russia, China and Namibia).[136] Along with the sponsoring countries, the position that NATO's action was illegal was also supported by Ukraine and Cuba.[137] Speaking after the vote, the UK once again argued that Resolutions 1199 and 1203 determined that Milosevic's policies had "caused the threat to peace and security in the region," and that "military intervention is justified as an exceptional measure to prevent an overwhelming humanitarian catastrophe."[138]

As such, NATO did not defend its action "on the basis of a specific rule of law -even humanitarian intervention- new or old."[139] In general, the legal grounds provided by NATO was based on the argument that Resolutions 1199 and 1203, in which the Council determined the situation as constituting a threat to international peace and security in the context of Chapter VII, warranted military action. In particular, it was held that FRY's non-compliance with the Security Council resolutions and the failure of the Council to act justified exceptional measures to counter the human rights violations.[140] In this sense, the central and crucial role of the Security Council in the maintenance of international peace and security does not appear to be challenged by these countries. On the other hand, nowhere in the statements was there an overt reference to a general legal right of humanitarian intervention, or to relevant state practice for that matter. Rather, the humanitarian aspect was raised in political and

---

[134] *Ibid.*, 7.
[135] *Ibid.*, 9-10.
[136] Draft resolution sponsored by Russia, Belarus and India, UN Doc. S/1999/328 (1999).
[137] UN Doc. S/PV.3989 (1999), 5-6 (Russia), 9 (China), 9-10 (Ukraine), 12 (Belarus), 12-14 (Cuba), 15-16 (India).
[138] *Ibid.*, 7.
[139] Jonathan I. Charney, "Anticipatory Humanitarian Intervention in Kosovo," *American Journal of International Law* 93:4 (1999), 836.

moral terms by emphasizing the overwhelming need to put an end to the atrocities committed by the Serbs in Kosovo. Even then, the exceptional nature of the situation was underlined. For example, in October 1998, when the *Bundestag* gave its approval to German participation in the NATO action, Foreign Minister Kinkel stressed that it must not set a precedent.[141] In a similar vein, the US Secretary of State Albright emphasized in a peace conference after the air campaign that Kosovo was "a unique situation sui generis in the region of the Balkans."[142] Only a few states attempted to lay down a legal ground for humanitarian action. The Netherlands for example, by stating "the Charter is not the only source of international law," implied that general norms existed outside the Charter. In particular, it argued that "a gradual shift" was occurring in international law, whereby "respect for human rights [is] more mandatory and respect for sovereignty less absolute." As a result, the Dutch representative concluded that there is now "a generally accepted rule of international law that no sovereign state has the right to terrorize its citizens."[143]

Many of the non-NATO states implicitly acknowledged the untenable legal grounds for the action.[144] In this respect, it is important to note that while refraining from questioning the legality of NATO's action, they repeatedly underlined the exclusive prerogatives of the Security Council in the sphere of peace and security, and stressed

---

[140] See for example the statements of NATO states in the Security Council during the adoption of Resolution 1244, which established an "international civil and security presence" in Kosovo, UN Doc. S/PV.4011 (1999), 12 (France and Netherlands), 13 (Canada), 13-14 (US), 17-18 (UK).

[141] Declaration of the German Foreign Minister Klaus Kinkel, quoted in Bruno Simma, "NATO, the UN and the Use of Force: Legal Aspects," *European Journal of International Law* 10:1 (1999), 13.

[142] Madeline M. Albright, press conference with Russian Foreign Minister Igor Ivanov, Singapore, 26 July 1999, http://secretary.state.gov//www//statements/1999/990726b.html.

[143] UN Doc. S/PV.4011 (1999), 12. It has to be noted that to some extent, Canada held the same position. See UN Doc. S/PV.4011 (1999), 13.

[144] One has to note that opposing Russian draft resolution, Slovenia pointed out that "the Security Council has the primary but not exclusive responsibility for the maintenance of international peace and security." UN Doc. S/PV.3989 (1999), 4.

that it was crucial to continue to consider the Security Council as the only body entitled to sanction resort to force.[145] Like the NATO states, however, they invariably pointed to the Belgrade's decline of peaceful settlement, the extreme urgency of the humanitarian crisis and the inability of the Council to act, and based their support on moral arguments. By way of conclusion then, it can be argued that neither the acting states (NATO states) nor the supporting states legitimized the military action by referring to a legal necessity or the right of humanitarian intervention provided by the current international law. Rather, these states regarded such conduct as prompted by the political and moral necessities. Thus, the action was endorsed not on the basis of *opinio juris*, but on *opinio necessitatis*.[146] In this sense, it can be argued that NATO's military intervention in FRY does not substantiate admissibility of unilateral humanitarian intervention without a Council authorization, whenever the Security Council proves to be unable to take action because of the veto (or prospect of a veto) by one or more permanent members.[147] As to the subsequent UN reaction to military action, it can be pointed out that the UN had at least two opportunities to endorse the NATO action *ex post facto*. At the peak of the NATO bombing, the Security Council adopted Resolution 1239, which neither supported nor condemned the military

---

[145] See for example the statements of Malaysia, Brazil, Argentina, Gabon, Gambia, UN Doc. S/PV.4011 (1999), 15-17 (Malaysia), 17-18 (Brazil), 19-20 (Argentina, Gabon and Gambia). Nevertheless, one has to note that opposing Russian draft resolution, Slovenia pointed out that "the Security Council has the primary but not exclusive responsibility for the maintenance of international peace and security." UN Doc. S/PV.3989 (1999), 4.

[146] Antonio Cassese, "A Follow-Up: Forcible Humanitarian Countermeasures and Opinio Necessitatis," *European Journal of International Law* 10:4 (1999), 796.

[147] One prominent scholar holds that the NATO action offers "a badly flawed precedent for evaluating future claims to undertake humanitarian intervention without proper UN authorization." Richard Falk, "Kosovo, World Order, and the Future of International Law," *American Journal of International Law* 93:4 (1999), 856. Another scholar notes that "the NATO actions, regardless of how well-intentioned, constitute an unfortunate precedent for states to use force to suppress the commission of international crimes in other states –grounds that easily can be and have been abused to justify intervention for less laudable objectives." Charney, "Anticipatory Humanitarian Intervention in Kosovo," 835.

action.[148] At the end of the NATO campaign, the Council adopted Resolution1244, which decided "on the deployment in Kosovo, under United Nations auspices, of international civil and security presence."[149] This resolution also did not include any remarks on previous NATO action, and was totally prospective in nature.[150] More precisely, it "did not retroactively legalize NATO's actions but only prospectively authorized foreign states to intervene in the FRY to maintain the peace."[151] Given the views of the states expressed before, throughout and after the NATO military action, assessing lack of an explicit UN condemnation of NATO's military intervention in FRY as evidence of UN's admission of unilateral humanitarian intervention or recognition of the emergence of a new customary rule, does not appear convincing.[152]

The appraisal of the two recent cases of unilateral humanitarian interventions without an explicit UN authorization demonstrates that neither the states' views nor the UN reactions point to admittance of the use of force for humanitarian concerns as an exception of Article 2(4). Rather, they validate that forcible action remains to be

---

[148] SC Res. 1239, 14 May 1999.
[149] SC Res. 1244, 10 June 1999.
[150] Julie Mertus, "The Imprint of Kosovo on the Law of Humanitarian Intervention," *Unpublished Paper*, http://www.nsulaw.nova.edu/student/ organizations/ILSAJournal/6-2/Mertus%206-2.html. For an opposite view that Resolution 1244 effectively endorsed the NATO action and provided it the Council's support, see Louis Henkin, "Kosovo and the Law of Humanitarian Intervention, *American Journal of International Law* 93:4 (1999), 824-828.
[151] Charney, "Anticipatory Humanitarian Intervention in Kosovo," 835.
[152] With regards to the emergence of a new customary norm of humanitarian intervention, one prominent writer states that: "Because the Charter restrictions on the use of force are themselves *jus cogens* norms, it would take a new norm of that quality to override them. The only clearly effective solution would be to amend the United Nations Charter on the basis of a norm of equal status." Charney, "Anticipatory Humanitarian Intervention in Kosovo," 837. For the view that NATO action may be taken as evidence of an emerging doctrine in international law allowing the use of forcible countermeasures to impede a state from committing large-scale atrocities on its own territory, in circumstances where the Security Council is incapable of responding adequately to the crisis, see Antonio Cassese, "Ex Iniuria Ius Oritur: Are We Moving towards International Legitimation of Forcible Humanitarian Countermeasures in the World Community?," *European Journal of International Law* 10:1 (1999), 23-30.

viewed within the exclusive domain of the Security Council in line with the terms of Article 2(7). However, as much as one should not overrate the precedent-setting value of these cases for the admissibility of humanitarian intervention, one should not also underestimate their significance in illustrating the Council's increased inclination to consider human rights issues in the Organization's jurisdiction.

2. 3. 2. Humanitarian Interventions Authorized Ex Post Facto

Within the state practice of humanitarian interventions, there are also those interventions, which were not authorized, but were nevertheless endorsed by the UN retrospectively. In this respect, the relevant cases are ECOWAS interventions in Liberia in 1990 and in Sierra Leone in 1997.

2. 3. 2. 1. ECOWAS Intervention in Liberia (1990)

One prominent example of Security Council's retroactive endorsement of the use of force for humanitarian purposes is the Economic Community of West African States (ECOWAS) action in Liberia in 1990. The civil strife in Liberia started in 1989, and by the summer of 1990, the fighting grew increasingly violent and brutal with different ethnic groups and tribal clans supporting one or the other of the main groups,[153] which led President Doe of Liberia to appeal for assistance to the UN and

[153] For the course of civil war, see "Suppression of Rebellion" (January 1990); "Increasing Scale of Revolt" (April 1990); "Rebel Successes Advance into Monrovia" (July 1990), *Keesing's* 36. The main groups in the civil war were AFL (Armed Forces of Liberia) under the leadership of President Doe, NPFL (National Patriotic Front of Liberia) led by Charles Taylor, a former Liberian minister, and a third insurgent group, the Independent National Patriotic Front of Liberia (INPFL), a splinter group of NPFL, led by Prince Johnson. David Wippman, "Enforcing the Peace: ECOWAS and the Liberian Civil War" in Damrosch (ed.), *Enforcing Restraint*, 158-165.

the United States.[154] However, attempts to bring the matter before the UN Security Council were thwarted by the Ivory Coast and Burkina Faso, both of which allegedly supported the rebels.[155] Finally, in July 1990, Doe called for a peacekeeping force to be set up in Liberia by ECOWAS "to forestall increasing terror and tension."[156] Consequently, a peacekeeping force, known as the ECOWAS Monitoring Group (ECOMOG), was sent to Liberia on 24 August 1990, under the auspices of the ECOWAS, comprising troops from Nigeria, Gambia, Ghana, Guinea, and Sierra Leone.[157] ECOMOG's force commander was mandated to conduct military operations for the objectives of instituting a ceasefire, establishing an interim government, and creating the necessary conditions for democratic elections.[158] The Standing Mediation Committee of ECOWAS referred to the "massacre of innocent civilians," and the "state of anarchy and total breakdown of law" as a basis for its decision to create ECOMOG.[159] All insurgent factions, but INPFL, were opposed to the ECOMOG intervention. Although Doe initially asked for assistance, the objectives of the intervention, which included his resignation and creation of an

---

[154] Clement E. Adibe, "Strategic Coercion in Post-Cold War Africa" in Lawrence Freedman (ed.), *Strategic Coercion: Concepts and Cases* (Oxford: Oxford University Press, 1998), 298-299.
[155] *Ibid.*, 306.
[156] Letter addressed by President Samuel K. Doe to the Chairman and Members of the Ministerial Meeting of the ECOWAS Standing Mediation Committee, 14 July 1990, reprinted in M. Weller (ed.), *Regional Peace-Keeping and International Enforcement: The Liberian Crisis* (Cambridge: Cambridge University Press, 1994), 60. It should be noted that, at the time of the request, Doe's regime had already disintegrated and lost de facto control of the country. See "Rebel Successes Advance into Monrovia," *Keesing's* 36 (July 1990).
[157] It has to be noted that not all the ECOWAS countries supported the peace-keeping force. For example, Burkina Faso strongly opposed the intervention, arguing that ECOWAS had no competence to interfere in member states' internal conflicts. Togo, Mali, the Ivory Coast and Senegal refused to contribute troops to the force. See "Civil War – Sending of ECOWAS Force – Large-scale Casualties," *Keesing's* 36 (August 1990).
[158] ECOWAS, Standing Mediation Committee, Decision A/DEC.1/8/90, on the Cease-fire and Establishment of ECOWAS Cease-fire Monitoring Groups for Liberia, 7 August 1990, reprinted in Weller (ed.), *Regional Peace-Keeping*, 67. See also, "Civil War – Sending of ECOWAS Force – Large-scale Casualties," *Keesing's* 36 (August 1990).
[159] Final Communiqué of the First Joint Summit Meeting of the ECOWAS, Standing Mediation Committee and the Committee of Five, paras. 6-9, reprinted in Wippman, "Enforcing the Peace: ECOWAS and the Liberian Civil War," 176.

interim government, were not acceptable to him. Having occupied most of Liberia, Taylor's forces (NPFL) were also strongly against the intervention.[160] Thus, immediately after its arrival, ECOMOG engaged in fighting with NPFL, which was in control of approximately 90 percent of the country. Meanwhile clashes between various splinter factions continued.[161]

The legal basis for ECOWAS's intervention in Liberia was uncertain at best. In addition to the absence of a Security Council authorization, President Doe, the internationally recognized head of government, who initially requested a peacekeeping force, opposed the ECOMOG intervention, which sought to replace him as President. In fact, the decision to intervene made no reference to Doe's initial request. Furthermore, neither the ECOWAS Treaty of 1975 nor the 1978 Protocol on Non-Aggression laid down a regional security mechanism to handle internal conflicts.[162] The provision that came closest to the management of an internal conflict was contained in the 1981 Protocol on Mutual Assistance on Defense. The related articles of the Protocol indicated that an internal conflict if actively supported by and sustained from outside ECOWAS, would be addressed within ECOWAS framework contingent on the request of the member state.[163] Thus, intervention of

---

[160] For detailed review of the responses of rival factions to the ECOMOG intervention, see D. Elwood Dunn, "Liberia's Internal Responses to ECOMOG's Interventionist Efforts" in Karl P. Magyar and Earl Conteh-Morgan (eds.), *Peacekeeping in Africa: ECOMOG in Liberia* (London: MacMillan Press Ltd., 1998), 92-98.

[161] Karl P. Magyar, "ECOMOG's Operations: Lessons for Peacekeeping" in Magyar and Morgan (eds.), *Peacekeeping in Africa*, 61.

[162] Hilaire McCoubrey and Justin Morris, *Regional Peacekeeping in the Post-Cold War Era* (The Hague: Kluwer Law International, 2000), 141.

[163] Articles 4, 16, 17, 18, Protocol Relating to Mutual Assistance on Defence, May 29, 1981, reprinted in Weller (ed.), *Regional Peace-Keeping*, 19.

ECOWAS forces is not envisaged in "purely internal" conflicts and in the absence of member state's request.[164]

Notwithstanding, in January 1991, five months after ECOMOG forces arrived, a Security Council presidential statement commended ECOWAS's efforts to promote peace in Liberia and "called upon all parties to the conflict to respect the ceasefire agreement," which was established in November 1990 among the Liberian factions.[165] And on 19 November 1992, the UN Security Council passed Resolution 788 unanimously, determining that the "deterioration of the situation in Liberia constitutes a threat to international peace and security, particularly in West Africa as a whole." It further called for "a complete arms embargo under Chapter VII against Liberia," and recalling Chapter VIII, called upon ECOWAS to "continue its efforts to assist the peaceful implementation" of the terms of the Accord signed between the parties to the conflict.[166] By other resolutions adopted in 1993, the Security Council consistently made reference to the provisions of Chapter VIII and commended ECOWAS for its efforts to restore peace.[167] Finally, on 22 September 1993, the Security Council established a peacekeeping force, UN Observer Mission in Liberia (UNOMIL), in order to supplement the ECOMOG effort to restore order and disarm rival groups.[168] Meanwhile, for its part, the General Assembly adopted several

---

[164] Although during the creation and deployment of ECOMOG units, ECOWAS did not invoke the provisions of 1981 Protocol, the Ivory Coast referred to it, while explaining the legal basis of the ECOMOG forces in the Security Council. See UN Doc. S/PV.3138 (1992), 27.

[165] UN Doc. S/22133 (1991). A similar statement was also issued on 7 May 1992. See UN Doc. S/23886 (1992).

[166] SC Res. 788, 19 November 1992.

[167] SC Res. 813, 26 March 1993; SC Res. 856, 10 August 1993, both adopted unanimously.

[168] SC Res. 866, 22 September 1993. The resolution underlined that "this would be the first peace-keeping mission undertaken by the United Nations in cooperation with a peacekeeping mission already set up by another organization, in this case ECOWAS." Until the UN-observed elections in 1997, various peace accords were brokered, each of which was followed by bloody clashes. Subsequent to the formation of the new government, UNOMIL began to withdraw, a process

resolutions on the emergency assistance for Liberia, on the assistance for the rehabilitation and reconstruction of Liberia, and on the financing of UNOMIL.[169]

The ECOWAS intervention in Liberia was predominantly defended on humanitarian grounds. In a statement justifying the intervention, ECOWAS emphasized the humanitarian nature of the action, by stating that it was designed "first and foremost to stop the senseless killing of innocent civilian nationals and foreigners, and to help the Liberian people to restore their democratic institutions."[170] Closely related to the humanitarian aspect was the ECOWAS express aim of restoring order in Liberia. In this respect, the then Chairman of the Organization of African Unity (OAU) maintained that the ECOWAS intervention did not violate the OAU's principle of non-interference in domestic affairs, since the state of Liberia was effectively seized to exist. Similarly, President Mugabe of Zimbabwe argued that when there was a total breakdown of law and order, the principle of domestic jurisdiction did not impede intervention, for domestic affairs of a country referred to "affairs within a peaceful environment."[171]

As to the UN reaction, at the outset, the principle aspect regarding the ECOWAS intervention in Liberia appears to be the lack of formal Security Council authorization of the use of force. While praising ECOWAS efforts for working to

---

completed by September 1997. The new government and ECOWAS agreed that ECOMOG should remain in the country to provide security, especially during return of refugees. Over the course of the conflict, 700.000 Liberians became refugees, and at least 150.000 Liberians were killed between 1989 and 1995. Martin Ortega, *Military Intervention and The European Union*, Chaillot Papers 45 (Paris: Institute for Security Studies of WEU, 2001), 34.

[169] See for example GA Resolutions 45/232, 21 December 1990; 46/147, 17 December 1991; 47/154, 18 December 1992; 48/478, 23 December 1993.

[170] Greenwood, "Is There a Right of Humanitarian Intervention?," 37.

[171] Quoted in Wippman, "Enforcing the Peace: ECOWAS and the Liberian Civil War," 182.

bring peace to Liberia, the Council statements made no specific reference to the use of force. Similarly, during the discussion of the matter, the Council did not address the legality of the ECOWAS decision to use force in 1990, or for that matter to the ongoing use of force by ECOMOG against one of the warring factions in Liberia at the time. Nevertheless, almost all delegates speaking at the Council debate applauded ECOWAS efforts to restore peace to Liberia.[172] The only criticism came from Burkina Faso, which stated that it had "some reservations over certain measures and the manner in which they were implemented."[173] As a result, given that the Security Council resolutions and presidential statements 'commended' ECOWAS for its efforts, it can be said that the United Nations did not consider the ECOWAS action as a breach of the principle of nonintervention in domestic affairs or Article 2(4) of the Charter. Thus, although Resolution 788 did not authorize ECOMOG "to use all necessary means," the following emphasis on ECOWAS action as a commendable regional effort to restore peace in the subsequent resolutions as well as in the states' statements suggests that Resolution 788 was a retroactive validation of ECOMOG's use of force. In this respect, the UN approach to the ECOWAS involvement in the Liberian internal conflict is reflected in a report of the Secretary-General on the matter, which states that:

> "Liberia continues to represent an example of systematic and effective cooperation between the United Nations and regional organizations, as envisaged in Chapter VIII of the Charter. The role of the United Nations has been a supportive one. Closest contact and consultation have been maintained with ECOWAS, which will continue to play the central role in the implementation of the [Cotonou] peace agreement."[174]

---

[172] See UN Doc. S/PV.3138 (1992).
[173] *Ibid.*, 33.
[174] UN Doc. S/26200 (1993).

2. 3. 2. 2. ECOWAS Intervention in Sierra Leone (1997)

Following a military coup in Sierra Leone,[175] Nigeria sent its forces to this country in May 1997 to restore law and order. Soon they were subsumed under the Nigerian-led ECOWAS intervention force deployed in Freetown to restore peace to the country.[176] There was universal condemnation of the coup. During its Council of Ministers' sixty-sixth ordinary session (28-31 May 1997), the OAU, for example, condemned the coup and called for the immediate restoration of constitutional order, appealing to the leaders of ECOWAS to assist the people of Sierra Leone in that regard.[177] Similarly, in a 28 May statement, the EU deplored the attempt to overthrow the Government of Sierra Leone and urged the restoration of democratic civilian government.[178] The President of the Security Council also issued several statements on behalf of the Council, deploring the attempt to overthrow the democratically elected government. The statements expressed deep concern about the continuing crisis in Sierra Leone and its negative humanitarian consequences on the civilian populations including refugees, and internally displaced persons and, in particular, the atrocities committed against Sierra Leone's citizens and foreign nationals.[179] At the annual summit of the ECOWAS on 30 August 1997, the heads of state and government of 15 members characterized the new military regime in the country as 'illegal,' and called for the immediate restoration of the "legitimate government" of

---

[175] For the history of the conflict in Sierra Leone, see David Shearer, "Exploring the Limits of Consent: Conflict Resolution in Sierra Leone," *Journal of International* Studies 26:3 (1997), 845-860. For detailed account of the events in 1997, see "Military Coup," *Keesing's* 43 (May 1997); "Chaotic Aftermath of Military Coup," "Installation of Koroma as President," *Keesing's* 43 (June 1997).
[176] "International Reaction to Coup," *Keesing's* 43 (May 1997); "Chaotic Aftermath of Military Coup," *Keesing's* 43 (June 1997).
[177] *UN Yearbook* (1997), 132.
[178] UN Doc. A/52/165-S/1997/423 (1997).

President Kabbah and of peace and security, and the "resolution of the issues of refugees and displaced persons." ECOWAS authorized an economic blockade against Sierra Leone, to be enforced by ECOWAS Monitoring Group (ECOMOG). It also mandated ECOMOG to restore law and order in Sierra Leone.[180] Although in its statements the Security Council deemed the situation in Sierra Leone as endangering "peace, security and stability of the whole region,"[181] it did not authorize such action until it adopted Resolution 1132 on 8 October, which determined the situation in Sierra Leone as constituting threat to international peace and security.[182] Expressing its strong support for the endeavors of ECOWAS, the Council authorized ECOWAS under Chapter VIII to enforce the provisions of the resolution, which included arms and oil embargoes, and a freeze on travel by, and financial assets of, members of the military junta, in cooperation with the democratically elected government of Sierra Leone. As noted above, however, ECOWAS had started to operate in advance of its Council mandate. Thus, Resolution 1132, like the Resolution 788 on Liberia, served as a post-validation of ECOMOG action. In a following resolution, the Council further commended ECOMOG for restoring peace in Sierra Leone.[183] Support for collective action for humanitarian and pro-democratic grounds also came from the UN Secretary-General, Kofi Annan, who welcomed the ECOWAS efforts in securing peace in Sierra Leone, and stated:

> "Africa can no longer tolerate, and accept as fait accompli, coups against elected governments, and the illegal seizure of power by military cliques, who sometimes act for sectional interests, sometimes simply for their own."[184]

---

[179] See UN Doc. S/PRST/1997/29 (1997); UN Doc. S/PRST/1997/36 (1997); UN Doc. S/PRST/1997/ 42 (1997).
[180] "Annual Summit," *Keesing's* 43 (August 1997).
[181] See UN Doc. S/PRST/1997/36 (1997); UN Doc. S/PRST/1997/ 42 (1997).
[182] SC Res. 1132, 8 October 1997.
[183] SC Res. 1162, 17 April 1998.
[184] UN Doc. SG/SM/6481 – AFR/44 (1998).

2. 3. 3. Humanitarian Interventions with Explicit UN Authorization

The United Nations has recently made increasing use of Security Council resolutions to authorize member states to use force in particular cases, whereby an internal situation was deemed to present a threat to international peace and security.[185] In this regard, the earliest example is the case of Southern Rhodesia. Determining the situation in Southern Rhodesia created by the rule of a white racist government as a threat to the peace, the Security Council invoked its enforcement powers in 1966, to authorize United Kingdom "to prevent by the use of force if necessary" the arrival of oil tankers to Southern Rhodesia.[186] Although no military forces entered Rhodesian territory, Rhodesian case remains to be indicative of the Council's view with regard to the Organization's intervention and the limits of "domestic jurisdiction."[187]

The most significant recent cases of such authorizations based on a finding of an internal humanitarian crisis posing a threat to peace and security are the US intervention in Somalia (1992) and the French intervention in Rwanda (1994).

---

[185] It has to be noted that whether it is within the Security Council's powers to adopt resolutions, which authorize member states to use force has been a subject of debate among the legal scholars. For examination of the questions relating to the Council's power of delegation, see Niels Blokker, "Is the Authorization Authorized? Powers and Practice of the UN Security Council to Authorize the Use of Force by 'Coalitions of the Able and Willing'," *European Journal of International Relations* 11:3 (2000), 541-568.

[186] SC Res. 221, 9 April 1966. The resolution was adopted by 10 votes to 0, with 5 abstentions (Bulgaria, France, Mali, USSR, Uruguay).

2. 3. 3. 1. The US-led Humanitarian Intervention in Somalia (1992):

As a result of poverty and corrupt rule, shortly after the end of the Cold War and following the ouster of President Mohamed Siad Barre in January 1991, Somalia fell into a clan-based civil war, which by the estimates of the UN in December 1992, led to the death of more than 300.000 Somalis, and 900.000 refugees in Kenya, Ethiopia, Djibouti, Yemen and Saudi Arabia.[188]

The first UN Operation in Somalia (UNOSOM I) was deployed with the consent of the warring factions in April 1992.[189] However, when UNOSOM I proved to be unable to carry out its basic peacekeeping mandate,[190] Secretary-General Boutros Boutros-Ghali reported to the Council that the continuation of the relief operations had required resort to enforcement measures under Chapter VII. In his letter dated 29 November 1992 to the Security Council, he stressed that:

---

[187] For details of the Security Council's consideration of the situation in Southern Rhodesia, see Bailey, *The UN Security Council and Human* Rights, 3-6. See also, *UN Yearbook* (1966), 94-110.

[188] For the background of the civil war in Somalia, see for example, David D. Laitin, "Somalia: Intervention in Internal Conflict," *Unpublished Paper* (Stanford University, 2001), 1-2, http:/www.puaf.umd.edu/CISSM/Projects/NIC/Laitin.htm; Hugo Slim and Emma Visman, "Evacuation, Intervention and Retaliation: United Nations Humanitarian Operations in Somalia, 1991-1993" in John Harris (ed.), *The Politics of Humanitarian Intervention* (London: Pinter Publishers, 1995), 146-147; Jeffrey Clark, "Debacle in Somalia: Failure of the Collective Response" in Damrosch (ed.), *Enforcing Restraint,* 207-212; Deon Geldenhuys, *Foreign Political Engagement: Remaking States in the Post-Cold War World* (London: Macmillan Press, 1998), 124-131. For information on the state of Somalia in early 1992, see the Secretary-General's reports to the Security Council on the situation in Somalia, UN Doc. S/23829 & Add. 1-2 (1992), UN Doc. S/23693 & Corr. 1 (1992), UN Doc. S/24179 (1992), UN Doc. S/24343 (1992), UN Doc. S/24480 (1992), UN Doc. S/24859 (1992), UN Doc. S/24868 (1992). See also, "Threat of Deaths Through Mass Starvation," *Keesing's* 38 (August 1992); "Evidence of Worsening Famine," *Keesing's* 38 (September 1992).

[189] Before the formation of UNOSOM I, the Security Council adopted several resolutions regarding the situation in Somalia, by which it first imposed an arms embargo against Somalia and later declared its concern that the "continuation of the situation in Somalia constitutes a threat to international peace and security." See SC Res. 733, 23 January 1992 and SC Res. 746, 17 March 1992 respectively. Upon the deterioration of the situation, Security Council established UNOSOM I by Resolution 751 in April 1992. In August, by Resolution 775, the Council increased the authorized deployment to 3,500. See SC Res. 751, 24 April 1992 and SC Res. 775, 28 August 1992. All these resolutions were adopted unanimously.

[190] See "Obstacles to UN Efforts," *Keesing's* 38 (October 1992).

> "The Security Council now has no alternative but to decide to adopt more forceful measures to secure humanitarian operations in Somalia."[191]

This recommendation came four days after the US offered to provide 20,000 troops to assist the distribution of the relief supplies in Somalia as part of a multinational force authorized by the UN.[192] Consequently, on 3 December 1992, the Security Council unanimously adopted Resolution 794, which recognized the "unique character" and "extraordinary nature" of the situation in Somalia and the need for "an immediate and exceptional response." The resolution declared "the magnitude of the human tragedy caused by the conflict in Somalia" as a threat to international peace and security. Invoking Chapter VII, it authorized "the Secretary-General and Member States cooperating to implement the offer [by the United States to organize and lead an operation] to use all necessary means to establish as soon as possible as secure environment for humanitarian relief operations in Somalia."[193] On 9 December, 28.000 US troops were deployed in Somalia under Unified Task Force (UNITAF, also known as *Operation Restore Hope*).[194]

The characterization of Somali crisis in Resolution 794 as a 'unique' and 'extraordinary' case, which requires an 'exceptional' response, was the common emphasized theme in the state views expressed at the time of the adoption of the resolution. Almost all representatives stressed the defined and limited objective of the operation as being the creation of a secure environment for the delivery and effective distribution of humanitarian assistance, and pointed out the unique and

---

[191] UN Doc. S/24868 (1992), 3.
[192] "US Offer of Military Intervention," *Keesing's* 38 (November 1992).
[193] SC Res. 794, 3 December 1992.
[194] See "US-led Military Intervention" and "Progress of US-led Military Operations," *Keesing's* 38 (December 1992).

exceptional situation in Somalia, which warranted a unique approach.[195] In explaining the US vote, the US representative underlined the peaceful and limited character of the mission, and expressed that the US had "no other objective," and the US forces would remain in Somalia "no longer than necessary."[196] It is noteworthy that the US also hinted a cautious attitude towards authorization of the use of force, by stating that cooperation among the international community in response to urgent humanitarian needs and to peacekeeping, should have to "occur on a case-by-case basis."[197] While Cape Verde maintained that the repercussions of the Somali crisis on neighboring states constituted the international dimension of the matter,[198] Britain expressed that the international community did not aim to intervene in the internal affairs of Somali, but it could not permit "a humanitarian crisis of this magnitude to continue."[199] For its part, India explicitly held that the action "should not set a precedent for the future."[200] On the other hand, some states revealed uneasiness regarding the authorization of the United States for undertaking the operation. For example, China expressed its reservations on the authorization of certain countries "to take military actions," for it might "adversely affect the collective role of the United Nations."[201] Similarly, Belgium stated that it would have preferred the action "to be purely United Nations operation."[202]

---

[195] See in particular, the statements of Zimbawe, Ecuador, China, Belgium, United Kingdom, Venezuela, Morocco, Hungary, India. UN Doc. S/PV3145 (1992), 7 (Zimbabwe), 12-13 (Ecuador), 17 (China), 23 (Belgium), 35 (United Kingdom), 39,41 (Venezuela), 46 (Morocco), 47 (Hungary), 49 (India).
[196] UN Doc. S/PV.3145 (1992), 36.
[197] *Ibid.*
[198] *Ibid.*, 19-20.
[199] *Ibid.*, 35.
[200] *Ibid.*, 51.
[201] *Ibid.*, 17.
[202] *Ibid.*, 24.

Many consider Resolution 794 as a watershed for the right of humanitarian intervention, for it established a direct link between an internal tragedy of violence and starvation, rather than its repercussions for the neighboring countries, and international peace and security.[203] In other words, the Council invoked Chapter VII and authorized intervention on the basis of the "domestic situation" alone.[204] In this respect, in his *Report on the Work of the Organization* in 1993, the Secretary-General maintained that the Security Council had "established a precedent in the history of the United Nations" by deciding "for the first time to intervene militarily for strictly humanitarian purposes."[205] However, despite the novelty of Resolution 794 in deeming human suffering as constituting a threat to international peace and security, its precedent-setting value should not be overrated, for, as examined above, states displayed a visible uneasiness concerning a potential for precedent-setting. In this respect, the use of terms such as 'unique,' 'extraordinary' and 'exceptional' appears to aim to distinguish Somalia from other cases of internal disorder,[206] and indicates the sensitivity and conscious effort of the states not to legitimize a general exception to the non-intervention principle. Moreover, although Resolution 794 recognized a direct link between the threat to humanitarian presence and international peace, that fact alone does not make the subsequent operation a "humanitarian intervention in the classical sense,"[207] insofar as there was no functioning central government in Somalia to request or dissent such an intervention of foreign forces. The lack of

---

[203] In this respect, Adam Roberts notes that the fact that the word "humanitarian" appears no less than 18 times in Resolution 794 indicates the reasoning and intentions of the Council to authorize intervention. Roberts, *Humanitarian Action in War*, 24.
[204] Greenwood, "Is there a Right of Humanitarian Intervention?," 37.
[205] *UN Yearbook* (1993), 51.
[206] Nicholas Wheeler and Justin Morris, "Humanitarian Intervention and State Practice at the End of the Cold War" in Rick Fawn and Jeremy Larkins (eds.), *International Society After the Cold War: Anarchy and Order Reconsidered* (London: Macmillan Press, 1996), 135.
[207] Roberts, "Humanitarian War: Military Intervention and Human Rights," 440.

government in Somalia is repeatedly underlined by the states and by the Secretary-General. For example, in his earlier report to the Council, urging for a Chapter VII enforcement action, the Secretary-General stated that:

> "At present no government exists in Somalia that could request and allow such use of force. It would therefore be necessary for the Security Council to make a determination under Article 39 of the Charter, that a threat to the peace exists, as a result of the repercussions of Somali conflict on the entire region, and to decide what measures should be taken to maintain international peace and security."[208]

Similarly, during the adoption of the resolution, states pointed to the lack of a government in Somalia. Belgium, for instance, referred Somalia as "a country without a government, without an administration, with no source of authority."[209] Venezuela maintained that the Secretary-General's judgment that there was no national authority in Somalia was indisputable.[210] Ecuador held that there was no government in Somalia to agree upon a humanitarian assistance.[211] From these statements, one can infer states' wariness regarding the use of force without the consent of the target state, which would be under normal circumstances (i.e. in cases where there exists a functioning government) considered as a violation of the principle of sovereignty in general and Article 2(4) in particular. In this sense, it can be argued that the humanitarian intervention in Somali was legitimated, since it was not perceived as contravening the principles of sovereignty and nonintervention.[212] Thus, the compelling human suffering aside, the question remains to be whether such an intervention would have been carried out, if there were an effective authority in Somalia. Finally, one should also point to the states' apprehension to authorize a

---

[208] UN Doc. S/24868 (1992), 3.
[209] UN Doc. S/PV.3145 (1992), 23-24.
[210] *Ibid.*, 41.
[211] *Ibid.*, 13.

member state to use force for humanitarian ends. As mentioned above, some states expressed their preference of a UN operation over the one undertaken by a member state. The express reluctance of the states to delegate authority to use force to one state leads to the deduction that states do not view unilateral intervention for humanitarian ends as 'proper,' even if it is authorized by the United Nations, and conceive such authorizations only in exceptional cases.

2. 3. 3. 2. The French-led Humanitarian Intervention in Rwanda (1994)

Another case in point is the 1994 UN authorized French intervention in Rwanda. On 4 August 1993, the opposing sides in Rwanda's civil war -the Hutu dominated government and the Tutsi-led rebel Rwandan Patriotic Front (RPF)- signed the Arusha Accord, formally ending the fight, which had started in October 1990.[213] A United Nations peacekeeping force (United Nations Assistance Mission in Rwanda, UNAMIR) was deployed in Rwanda in October 1993, to monitor the ceasefire and the process of demilitarization.[214] However, the death of Rwandan President Juvénal Habyarimana on 6 April 1994 unleashed violence once again on a horrific scale, which resulted in militant Hutus seizing control of the government.[215] Subsequently, the militant Hutus assaulted both ethnic Tutsis and moderate Hutus, which was

---

[212] For elaboration of this point, see Roberts, "Humanitarian War: Military Intervention and Human Rights," 439-442.

[213] For the background of civil war, see for example Bruce D. Jones, "'Intervention Without Borders': Humanitarian Intervention in Rwanda, 1990-94," *Journal of International Studies* 24:2 (1995), 226-229; Martin Plaut, "Rwanda –Looking Beyond the Slaughter," *The World Today* 50:8-9 (1994), 149-151.

[214] The Security Council established UNAMIR by Resolution 872 under Chapter VI authority, with the consent of the established government of Rwanda, and of both sides to the conflict. SC Res. 872, 5 October 1993.

[215] "Death of President – Renewed Violence," "Carnage After President's Death," *Keesing's* 40 (April 1994).

responded by Tutsis in kind.[216] By the end of April, it was maintained by observers that around 200,000 people died from ethnic massacres and some 500,000 had fled the country.[217] As fears of an unprecedented catastrophe increased, on 29 April 1994 Boutros-Ghali urged the Security Council "to consider what action, including a forceful action, it could take, or could authorize Member States to take, in order to restore law and order."[218] By late May 1994, Boutros-Ghali determined that the killings in Rwanda constituted 'genocide.'[219] Upon the reluctance of the Western states to provide logistical and financial resources[220] necessary for the implementation of UNAMIR's expanded mandate,[221] France expressed its willingness to intervene in Rwanda to put an end to the massacres, and requested Chapter VII authorization "in the spirit of Resolution 794" (which had authorized the US-led UNITAF operation in Somalia) for itself and Senegal "to send a force in

---

[216] "International Reaction," *Keesing's* 40 (April, 1994), Reuters, "UN Accuses Tutsi Rebels of Atrocities," *Washington Post*, 18 May 1994, A16; D. Lorch, "In a Bleak Camp, Rwanda Refugees Say Each Tribe Is Joining in the Kill," *New York Times*, 18 May 1994, A6.

[217] J. Preston, "250.000 Flee Rwanda For Tanzania," *Washington Post*, 30 April 1994, A1; K. Richburg, "Bodies Clog Rwandan River: Officials Count Hundreds of Corpses Per Day Floating into Tanzania," *Washington Post*, 2 May 1994, A12; "International Reaction," *Keesing's* 40 (April 1994).

[218] Letter from the Secretary-General to the President of the Security Council, UN Doc. S/1994/518 (1994).

[219] UN Doc. S/1994/640 (1994). By Resolution 925, the Security Council also established that "acts of genocide have occurred in Rwanda." SC Res. 925, 8 June 1994. For the details of humanitarian situation in Rwanda in May and June 1994, see "Humanitarian Crisis," (May 1994); "FPR Advances Ceasefire Attempts - Report by UN Special Rapporteur," (June 1994), *Keesing's* 40.

[220] For its part, the Clinton Administration at the time introduced guidelines for the deployment of US forces for UN peacekeeping with the Presidential Decision Directive 25, signed on 3 May 1994, which maintained that US forces would be stationed abroad in cases where US national interests were at stake. See "US Policy on Reforming Multilateral Peace Operations," reprinted in Richard N. Haass, *Intervention: The Use of American Military Force in the Post-Cold War World* (Washington DC: Brookings Institution Press, 1999), 233-245. With respect to Rwanda, the US consistently downgraded the crisis diplomatically and hampered effective intervention by UN forces. For the US policy regarding the Rwandan crisis, see Holly J. Burkhalter, "The Question of Genocide: The Clinton Administration and Rwanda," *World Policy Journal* 11:4 (1994/1995), 44-54. See also E. Sciolino, "New US Peace-keeping Policy De-emphasizes Role of the UN," *New York Times*, 6 May 1994, A1, A7; and D. Jehl, "US is Showing a New Caution on UN Peacekeeping Missions," *New York Times*, 18 May 1994, A1. For the European position, see S. Kinzer, "European Leaders Reluctant to Send Troops to Rwanda," *New York Times*, 25 May 1994, A1.

[221] The Security Council authorized an increase in the UN force in Rwanda to 5500, and expanded UNAMIR's mandate by Resolution 918, adopted on 17 May 1994.

without delay, so as to maintain a presence pending the arrival of the expanded UNAMIR."[222]

On 22 June 1994, the Security Council adopted Resolution 929, which recognized the situation in Rwanda as "a unique case which demands an urgent response by the international community," and determined that "the magnitude of the humanitarian crisis in Rwanda" constituted "a threat to peace and security in the region." Without mentioning France by name, the resolution sanctioned the "establishment of a temporary operation under national command and control aimed at contributing, in an impartial way, to the security and protection of displaced persons, refugees and civilians at risk in Rwanda." Acting under Chapter VII, it authorized "Member States...to conduct the operation...using all necessary means to achieve the humanitarian objectives."[223] Consequently, France launched *Operation Turquoise* on 23 June 1994 and quickly established a "safe humanitarian zone" in Rwanda.[224] All French forces left Rwanda by 22 August 1994.[225]

---

[222] Letter from the French representative to the Secretary-General, UN Doc. S/1994/734 (1994). French intervention had first been raised as an option by Alain Juppé, the Minister of Foreign Affairs, on 15 June 1994. Three days later President François Mitterrand and Prime Minister Edouard Balladur issued a joint statement giving notice of their intention to seek a UN mandate for a French humanitarian initiative. See "Failure to Deploy UNAMIR II – French Intervention," *Keesing's* 40 (June 1994); Reuters, "France May Move In to End Rwanda Killing," *New York Times*, 16 June 1994, A12.

[223] SC Res. 929, 22 June 1994.

[224] "Continuing Massacres and Civil War - Deployment of French 'Humanitarian' Force," "Launch of 'Operation Turquoise'," *Keesing's* 40 (June 1994); M. Simons, "French Troops Enter Rwanda in Aid Mission," *New York Times*, 24 June 1994, A1; "French Security Area," *Keesing's* 40 (July 1994).

[225] K. Richburg, "French Troops Withdraw From Rwanda Safe Zone," *Washington Post*, 22 August 1994, A14.

Unlike the unanimous support for the US-led intervention in Somalia, Resolution 929 passed with 10 votes in favor and 5 abstentions.[226] This contrast between the two authorized unilateral interventions, indicates that the authorized action in Rwanda was not without reservation. Speaking after the vote, the French representative underlined "exclusively humanitarian" character of the French initiative, which was "motivated by the plight of the people." He affirmed that France had no intention "to influence in any way the military and political situation," and stated the French action would end as soon as the expanded UNAMIR was deployed.[227] Almost all the abstainers, however, agreed that UNAMIR was the most appropriate framework for pursing an end to genocide in Rwanda, and thus any action -unilateral or multilateral- should be placed within it.[228] While Brazil and China underscored the fact that one of the parties to the conflict had opposed to the proposed mission,[229] New Zealand and Nigeria stressed their support for the "Council action" under Chapter VII. The supporting states on the other hand, emphasized the purely humanitarian character of the proposed action with a formulated mandate for a limited time-frame. They further pointed out that the grave humanitarian crisis in Rwanda had demanded an immediate action.[230] For example, Oman and Argentina specifically referred to the Rwandan situation as a unique case.[231] Nonetheless, the supporting statements also evince an uneasy approval of the French initiative. To begin with, implicit in most of

---

[226] States voted affirmatively comprised Oman, Argentina, Czech Republic, Djibouti, France, Russian Federation, Rwanda, Spain, United Kingdom and United States. States abstained were Brazil, China, New Zealand, Nigeria and Pakistan.
[227] UN Doc. S/PV.3392 (1994), 5-6.
[228] *Ibid.*, 3 (Brazil), 4 (China), 7 (New Zealand), 10 (Nigeria). Pakistan did not make a statement in the Security Council.
[229] From the outset the RPF made known its complete opposition to the French plan, warning that such intervention would be viewed as a provocation. See "FPR Opposition to French Involvement," *Keesing's* 40 (June 1994).
[230] See UN Doc. S/PV.3392 (1994).
[231] UN Doc. S/PV.3392 (1994), 10 (Argentina), 11 (Oman).

the supporting statements is doubts about the true motives of France.[232] In this respect, the vitality of the impartiality and neutrality of the operation was repeatedly underlined.[233] On the other hand, the US admitted that the solution agreed was not ideal.[234] Also, some of the supporting states stressed their preference for securing consent of the two warring parties in Rwanda.[235] As a result, in the light of these observations, it can be argued that the case of Rwanda reveals the shaky support to unilateral humanitarian intervention, even when there is an agreement on the merits of the crisis in question and there is an explicit authorization of the Security Council.

In concluding this chapter, one can argue that the UN response to unilateral military interventions for humanitarian purposes largely conforms to the restrictive view of the Charter. In other words, the view that there is no legal exception to the use of force for unilateral interventions on the ground of protection of human rights appears to be the prevailing position. More specifically, the UN practice provides a very weak support for any claim that the restraints of the Charter for the unilateral use of force "have been superseded by a new consensus concerning the use of force to protect human rights."[236] In this respect, the cases of Iraq and Kosovo validate that UN does not give a *carte blanche* to unilateral humanitarian interventions, even in cases where it determines a threat to peace and security. At best, it admits such a

---

[232] Many commentators observed that France was pursuing national self-interest in Rwanda under the guise of humanitarianism. See for example, Jones, "'Intervention Without Borders': Humanitarian Intervention in Rwanda, 1990-94," 231; Plaut, "Rwanda –Looking Beyond the Slaughter," 152; Wheeler and Morris, "Humanitarian Intervention and State Practice at the End of the Cold War," 158-159.

[233] See for example statements of the United States, Spain, the United Kingdom, Czech Republic, Argentina. UN Doc. S/PV.3392 (1994), 6 (US), 8 (Spain), 9 (UK and Czech Republic), 10 (Argentina).

[234] . UN Doc. S/PV.3392 (1994), 7.

[235] See statements of Russia, Czech Republic and Oman. UN Doc. S/PV.3392 (1994), 2 (Russia), 9 (Czech Republic), 11 (Oman).

[236] Farer, "An Inquiry into the Legitimacy of Humanitarian Intervention," 195.

right within its own framework depending on the merits of the case at hand, as the cases of Somalia and Rwanda demonstrate. This makes a profound difference in terms of the debate, for it shifts attention from Article 2(4) of the Charter to Article 2(7), which in turn clearly distinguishes legitimate collective action from illegitimate self-help, thus overcoming the traditional objection that a general right of humanitarian intervention could be abused. In this sense, it can be said that the UN has proved to be the key mechanism for providing a legal framework for humanitarian interventions. At the outset, it appears that the UN has extended the interpretation of the notion of threat to international peace and security, to include the wider purposes of the Charter. By widening the scope of "threat to peace," the UN has transcended the Article 2(7) restraint against intervention in the internal affairs of sovereign states. However, insofar as it emphasized the 'exceptional' nature in cases it did so, it can be said that the UN has deliberately avoided "one for all" criteria for humanitarian interventions. As a result, given the subjective nature of the Council's determination of threat to peace, it will be safe to say that the UN practice in the cases examined above does not establish a general right of humanitarian intervention. In addition, one has to recall that the UN established a direct link between international peace and security and human plight, and authorized military actions on humanitarian grounds in cases where there was complete anarchy (Somalia and Rwanda), while refrained from doing so where there was an effective government (Iraq and FRY). The fact that the UN authorized or retrospectively endorsed military interventions in "failed" or "collapsed" states, where consent of the host state was irrelevant (Somalia) or had little practical meaning (Rwanda, Liberia, Sierra Leone) demonstrates that the principle of sovereignty and non-intervention constitute priority in its decisions to invoke

enforcement actions. Thus, one can conclude that the UN is inclined to authorize unilateral humanitarian interventions in circumstances where the authorized intervention is believed to promote, rather than to undermine, the affected country's sovereignty by restoring the capacity of the affected people to reestablish order.

CONCLUSION

The principles of sovereignty –equality, independence, mutual respect and reciprocity- together find expression in the norm of non-intervention as the main governing rule of interstate relations. However, the phenomenon of intervention has been a prevalent factor of modern world politics. Scholars have defined intervention with respect to the type of activity, by reference to the type of actor or in relation to the target. There have been also attempts to classify the types of intervention. From the analysis of various definitions of interventions, this study has established four distinguishing aspects of intervention: First, the target of intervention is a recognized sovereign state; second, intervention is a temporary incident, which aims to influence the internal affairs of a state; third, intervention presumes the absence of consent of the target state; and fourth, intervention is distinguished from other types of influence with its anticipated and direct effect on the target state as opposed to involuntary and minor impact. In the light of these characteristics, this study adopted a definition of intervention that encompasses unsolicited acts of military interference in another sovereign state's conduct of its internal affairs.

Despite the pervasiveness of intervention in international politics, the rule of non-intervention remains firmly established in international law. Its intellectual origins as a principle go back to the writings of classical legal scholars and political thinkers.

Among these scholars were Grotius, Wolff, Vattel, Kant and Mill, all of whom articulated a principle of non-intervention in internal affairs as derived from the right to independence and sovereignty. Nonetheless, they also established exceptions to the rule of non-intervention on the basis of the arguments of international order and stability (Grotius, Wolff, Vattel, Mill), and republican homogeneity (Kant).

Notwithstanding the eminence ascribed to the non-intervention principle in classical legal and political writings, the phenomenon of intervention in internal affairs has coexisted with the principle of non-intervention since the foundation of the state system. During the era of Concert of Europe, intervention in internal affairs was considered as a legitimate right of European conservative powers to curb revolutionary movements. It functioned as an instrument of great powers to promote dynastic legitimacy. In this sense, the exercise of sovereign rights was contingent on the adherence to a certain arrangement of internal affairs. Outside Europe, European powers often raised a right of intervention on the grounds of treaties signed with non-European and non-Western powers. Alternatively, intervention outside the Concert system was also defended with a liberal emphasis on the notion of assisting the oppressed. During this period, European powers undertook interventions in the Americas as well. Although the Monroe Doctrine set forth an authoritative warning to European powers to refrain from intervening in the American affairs, the European interventions did not encounter serious American objections up until late nineteenth century. Underlining American neutrality with respect to the European affairs and a reciprocal expectation, the Monroe Doctrine remained mute regarding the principles governing US relations with Latin America, in that it did not forbid the US interference in the internal affairs of Latin American states. Nonetheless, it was not

until the rise of its power towards the end of the nineteenth century that the US embarked on enforcing the principles set forth in the Doctrine regarding European interventions in the Americas, and undertook several interventions in the Central and Latin American states itself. Although subsequent corollaries of the Monroe Doctrine elaborated humanitarian concerns as a justification for intervention, the US apprehension with self-preservation was evident in the US interventions in the region. Despite the prevalence of interventions, the doctrine of non-intervention nevertheless functioned as a legal restraint and guided state behavior by providing a standard for acceptable and unacceptable conduct in international relations as well as for situations where resort to intervention was regarded permissible.

Presently and at the universal level, it is the United Nations framework that governs the non-intervention rule. Despite the emphasis in the United Nations Charter and the General Assembly resolutions on the principle, contentions exist regarding the scope of behavior that is prohibited. The most relevant articles of the Charter with respect to the non-intervention are Article 2(4) and Article 2(7). While the former sets forth the general prohibition of the use of force, the latter lays down the United Nations' jurisdiction in relation to domestic jurisdiction of the member states.

Article 2(4) requires that states refrain from the threat or use of force in their international relations. In this sense, it represents the most explicit Charter provision against intervention with the use of armed force. Controversies regarding Article 2(4) arise in relation to the interpretations of the notions of "force," "threat of force," and "the frame of international relations" "territorial integrity and political independence." Examining the authoritative General Assembly resolutions –

Declaration on Principles of International Law and *Definition of Aggression*-, this study has concluded that Article 2(4) prohibits all unilateral use of force -employed directly or indirectly- not authorized by the UN. Moreover, it has established that Article 2(4) has a *jus cogens* status, and thus has universal and imperative applicability.

The principle of non-intervention as set in Article 2(7) differs from the duty of non-intervention established by general international law, since non-intervention clause of Article 2(7) applies to the relations between UN organs and member states, and stipulates that the United Nations is not permitted "to intervene in matters which are essentially within the domestic jurisdiction of any state." The fact that Article 2(7) does not provide a specific criteria for what amounts to the Organization's intervention or what is to be considered as "essentially domestic" has enabled the UN organs to bypass Article 2(7) "domestic jurisdiction" restraint through application of certain principles. The UN bodies have considered a matter, made recommendations, adopted resolutions and instituted missions of inquiry outside the territory of the state in concern insofar as an "international concern" on the matter has been raised. Thus, the aspect of "international concern" has removed the matter from the operation of Article 2(7), more specifically, brought it under the Organization's jurisdiction. In this respect, the highly vague criterion of "international concern" together with the broader goal of maintaining international peace and security provide the UN considerable latitude to address the issues of domestic jurisdiction. For on-spot inquiries and peacekeeping operations, however, the UN has relied on 'consent' of the state in question for claiming competence. As a result, the scope of domestic

jurisdiction has remained to be a relative concept, which is to be determined on the basis of the facts of each case.

Both Article 2(4) and Article 2(7), however, provide for exceptions to the rules they stipulate. With respect to the rule of Organization's non-intervention in domestic affairs, the enforcement measures under Chapter VII are the only exception. Chapter VII represents the heart of the collective security mechanism of the United Nations. Under Article 39, the Security Council is designated as the exclusive body to determine a threat to, or breach of international peace and security. Once the Security Council determines that a threat to peace, breach of the peace, or an act of aggression exist, it is allowed to embark on implementing non-military measures pursuant to Article 41, and in the event of their failure, undertake military measures in accordance with Article 42. As such, the Security Council is provided with a wide discretion for determination of the existence of a threat to, or breach of the peace, or an act of aggression. On the other hand, under Chapter VIII, the Charter assigns a role to "regional arrangements or agencies." By the related articles (Articles 52, 53 and 54), regional organizations are permitted to assume peacekeeping actions, but prohibited from exercising Chapter VII powers, unless they have acquired prior Security Council authorization. The Charter confines the role of the General Assembly to consider and make recommendations in matters of peace and security. In this respect, the 1950 *Uniting for Peace* resolution substantially broadened the Assembly's area of jurisdiction by empowering it to make recommendations on enforcement measures, when the Security Council is unable to act. Nevertheless, the General Assembly has effectively utilized the rights granted by the Resolution only once in the Korean case (1951). Thus, for the most part, the practice of the General

Assembly with respect to matters of peace and security has been confined to examination, discussion, and occasionally condemnation.

Under the Charter, the only exception to the general proscription of the use of force as laid down in Article 2(4) is Article 51, which contains the right of individual and collective self-defense. The most contentious issue regarding Article 51 concerns whether the use of right of self-defense is limited to the circumstances whereby an armed attack has already occurred or whether this right can be invoked in anticipation of such an attack. While some have read Article 51 as confining the right of self-defense to cases where an actual armed attack has occurred, others have contented that Article 51 should be interpreted as including the right to anticipatory self-defense in the case of an imminent danger of attack.

In short, the UN Charter strongly affirms the rule of non-intervention in internal affairs, and allows for only one condition as an exception to the prohibition of the use of force by states as opposed to fairly open-ended powers in relation to the Organization's intervention in domestic affairs. Along with the Charter, the rule of non-intervention is also enshrined as the main governing rule in interstate relations by a number of General Assembly resolutions.

By examining the Charter framework, the study thus specified that intervention in internal affairs is illegal, but there may be circumstances, which may justify such interventions. As one distinguished British statesman of the nineteenth century observed:

> "Intervention is a high and summary procedure which may sometimes snatch a remedy beyond the reach of law. Nevertheless, it must be admitted that, in the case of intervention as in that of revolution, its essence is illegality and its justification is its success."[1]

Within this context, the main purpose of the study has been to discover the normative trends in legitimization of specific justifications of military interventions by the United Nations. Before making a general conclusive assessment on the UN's application of the principle of non-intervention as set forth in the Charter and its implications for the normative framework of military intervention, it is useful to summarize the main findings of the research.

Although self-defense constitutes the main exception to the proscription of the use of force, states have at times invoked this right in highly dubious circumstances. As to cases of military interventions justified as individual self-defense in situations where an internal matter of a state is claimed to constitute an external threat to the security of another state, the UN response was found to conform to the restrictive interpretation of Article 51 and the customary requirements of the exercise of the right of self-defense, i.e. necessity and proportionality. In all cases examined in this respect, the UN did not endorse the military interventions defended on the basis of self-defense. Although there were prior acts of aggression involved in these cases, the absence of an actual armed attack together with the disproportionate magnitude of the military responses are found to be determinant in the UN's decline to consider those military interventions as acts of self-defense.

---

[1] Sir William Vernon Harcourt, "Historicus," *Letters on Some Questions of International Law* 41 (London, 1863), quoted in Quincy Wright, "Intervention, 1956," *American Journal of International*

As to the military interventions carried out in collective self-defense in situations where the target state is claimed to be in need of assistance against an alleged threat or aggression, the UN is found to have given a legal status to the use of force by a third state, which is not itself attacked or threatened. In this sense, the UN appears to interpret the collective self-defense in Article 51 beyond common, coordinated exercise of the right of individual self-defense by a number of states that were individually attacked, and admits the right of states to request military assistance of other states when faced with foreign aggression. The contending arguments in the cases examined mainly called into question whether or not the internal entity invoking the right to collective self-defense was the legitimate government, rather than the validity of such a right. Thus, the United Nations appears to consider third states' assistance to a state that was subject to foreign intervention in support of insurgents in that state as permissible. But the admissibility of such a right is qualified with the perception of the degree of threat posed by those prior acts of aggression to the target state's security. In other words, to the extent that the danger to the security of the state is considered as imminent and grave, the UN admitted intervention in collective self-defense as a valid legal ground. The UN has also applied a broader interpretation of armed attack and admitted a legal basis for collective self-defense in response to foreign aggression by irregular forces and to subversion by a foreign power insofar as the military actions in pursuance of collective self-defense were perceived to be in line with the customary criteria of self-defense -necessity, immediacy and lack of no other means. In this respect, the UN reactions are in conformity with the ICJ's interpretation of armed attack as encompassing military actions by irregular forces, as well as with the duty of every

---

Law 51:2 (1957), 274.

state to refrain from such acts as referred by the *Declaration on Principles of International Law* and acts listed as prohibited forms of use of force in the *Definition of Aggression.* With respect to collective self-defense in response to subversion and instigation of civil war, the United Nations is found to consider subversive activities as permissible grounds for invoking a right of collective self-defense, regardless of the difficulty in characterizing such acts as tantamount to "armed attack." Thus, the UN approach to such acts diverges from the ICJ's judgment that "assistance to rebels in the form of provision of weapons or logistical or other support" does not amount to armed attack. Contrary to the broader application of armed attack under the aforementioned circumstances, the UN has not admitted a right of collective self-defense in cases of claims of collective self-defense in response to an alleged external threat. Thus, in this sense, the UN's application of the right of collective self-defense does not permit a preventive intervention in anticipation of a threat, where there is no significant evidence provided to substantiate allegations of such threat. Combined with the element of the consent, the UN's broader interpretation of collective self-defense as opposed to more rigid application of armed attack in individual self-defense can be said to reflect the concern with the vulnerability of the weaker states to militarily stronger states.

Notwithstanding the approval of the right of collective self-defense as a permissible ground for military intervention along the lines of the customary criteria, the UN has nevertheless raised concerns with respect to the validity of 'consent' of the target state requesting assistance for collective self-defense. In conformity with the general international law and the ICJ's judgment, the UN admits the right of states to consent to the use of foreign armed force within their territory. By the same token, the UN is

found to consider 'consent' of the target state as an element circumventing the general prohibition of the use of force and regard military assistance rendered by one state to another at the latter's request is lawful. Thus, the UN views consent of the target state as a valid legal ground for military intervention in internal affairs. With respect to the *ad hoc* invitation, the UN has rather been concerned with the question of whether the authority delivering the request is legally entitled to do so. In this regard, the United Nations has not judged the legitimacy of the government strictly in terms of its exercise of real power over the totality of the territory in question. Insofar as the inviting entity was the established government, the UN generally has not questioned the validity of consent regardless of the government's position in relation to the internal conflict. More specifically, the government's effective power or its association with any of the parties in the internal conflict has not been a criterion for questioning the validity of the 'request' in situations of internal turmoil and civil war. In contrast, however, in cases where the constitutional authority of the inviting entity was uncertain, the UN has questioned the validity of the consent, and has not admitted consent as a valid legal ground for military intervention. Additionally, the UN has also declined 'consent' as a permissible justification for military intervention, when the inviting authority is perceived as not representing the actual will of the people i.e. as one not corresponding to "internal self-determination," or believed to have been established by an outside force. In a similar vein, the UN reactions to the military interventions on grounds of restoring order or defending democracy upon the consent of the alleged "democratically elected" government do not purport to UN's admittance of military intervention on such grounds. As to the consent given in advance by a treaty, in cases where the intervening power claimed to have responded to a request made in accordance with a

bilateral treaty (which generally provided for mutual assistance in case of an external threat), the UN reaction was concerned with the existence of a valid consent of the target state at the time of intervention. In this sense, the UN is found to give priority to the legality of the invitation at the time of intervention rather than the legality of the military intervention as arising out of the obligations of the contractual arrangement in question. Finally, the UN practice has not provided a definitive conclusion regarding the permissibility of military intervention based on *a priori* consent and against the will of the state at the time of intervention, for it has not been raised as an issue of objection in its resolutions concerning the only relevant example, i.e. the Turkish intervention in Cyprus. Thus, the UN has admitted the element of consent as a permissible ground for military intervention, but questioned it as a matter of fact.

Along with the exceptions contained in the rule of non-intervention in the internal affairs, states have raised other justifications. As to the question whether the implementation of the principle of self-determination can be invoked to justify military intervention, the examined cases have pointed to the conclusion that the UN does not admit assistance to self-determination as an additional justification for military intervention in internal affairs. Even in cases where the right of self-determination of the people in concern is not contested, the UN has considered the military interventions for promoting self-determination in contravention to Article 2(4). In this respect, the UN response corresponds to the general international law as well as the principles referred regarding this matter in the *Declaration on Principles of International Law* and the *Definition of Aggression* that while third states are permitted to give military equipment and financial or technical assistance to

liberation movements, they are not allowed to send armed troops in support of such movements. Thus, while the UN appears to admit "support for anti-colonial, anti-racist, anti-hegemonic action" as an exception to the rule of non-intervention, it denies a general right to use force for the purpose of assisting peoples to achieve self-determination.

With regards to the protection of nationals abroad as a legal ground for military intervention in internal affairs, UN has regarded it as a permissible justification for intervention to the extent that the use of force complies with the criteria of necessity, immediacy and proportionality. The UN nevertheless has not admitted the permissibility of military intervention in internal affairs defended on the basis of protection of nationals, when such interventions have resulted in prolonged involvement in the target state's internal affairs and had a political impact on the course or the outcome of the internal conflict. In other cases where the military intervention was limited in scope, scale and time, the UN did not respond at all, let alone negatively. Thus, the UN is found to implicitly permit the use of force to protect nationals abroad on the conditions of necessity, immediacy and proportionality, but not as a justification for extended military intervention in internal affairs.

Finally, with regards to the military intervention on the basis of humanitarian concerns, neither the states nor the UN are found to view humanitarian justifications as an admissible derogation from Article 2(4). Contrary to the prevailing general perception, the UN practice does not lend support to the permissibility of military intervention in internal affairs for promoting human rights. However, the human

rights violations and human plight have at times become matters of legitimate international concern and given way to authorizations of military interventions for humanitarian ends. In this sense, it appears that the UN has extended the interpretation of the notion of threat to international peace and security, to include the wider purposes of the Charter. By determining an "international concern" and widening the scope of "threat to peace," the UN has transcended the Article 2(7) restraint against intervention in the internal affairs of sovereign states. In this connection, it is found that forcible action with regards to humanitarian ends remains to be viewed within the exclusive domain of the Security Council. Nevertheless, insofar as the UN has emphasized the 'exceptional' nature in cases it had authorized military interventions for humanitarian concerns, the UN has avoided setting precedents for interventions on such grounds and rather chosen to link humanitarian concerns and "threat to peace" on the basis of specifics of the cases at hand. As a result, the UN practice has not established a general right of humanitarian intervention. The fact that the UN has linked international peace and security and human plight, and authorized or retrospectively endorsed military actions on humanitarian grounds in 'failed' or 'collapsed' states, while refrained from doing so where there was an effective government lend to a further inference that the principle of sovereignty and non-intervention constitute a priority in UN's application of the principles and purposes of the Charter.

By way of induction, the study finds that the UN regards self-defense and consent of the target state as the only permissible grounds for military intervention in internal affairs, while denies admissibility to other justifications, which cannot find express legal ground in the Charter. In this respect, the United Nations has not interpreted

Article 2(4) broadly so as to provide room for justifications for the use of force in pursuit of such values like freedom and democracy, and Article 51 as permitting preventive interventions in anticipation of a threat. Even in the context of admitted exceptions, the UN has been very meticulous to validate the facts of the matter at hand. The UN's application of the principle of non-intervention is therefore substantially in accordance with the restrictive interpretation of the provisions of the Charter, pertaining to the use of force and self-defense -Article 2(4) and Article 51. In this sense, the UN explicates Article 2(4) as entirely prohibiting any threat or use of force in state relations. Regarding Article 2(7) and Chapter VII, the UN has been cautious not to set precedents when the matter is intervention by the use of force, despite the fact that it enjoys a wide latitude in determining threats to peace and invoking enforcement measures under Chapter VII. By implication, the UN appears to interpret "maintenance of international peace and security" as the dominant purpose of the Charter.

In conclusion, among the three hypotheses formulated in the introduction of this study, the third one -by consistently declining the permissibility of unilateral military interventions in circumstances other than those stipulated by the Charter, the United Nations reactions to individual cases of unilateral military intervention have abided by the exceptions explicitly laid down in the UN Charter, therefore, the UN practice indicates substantial adherence to the Charter scheme regarding the prohibition of the use of force and the principle of non-intervention in internal affairs - is verified by the research. The first two hypotheses, namely:

- By consistently endorsing the justifications other than those provided in the Charter, the United Nations reactions to individual cases of unilateral military

intervention have made the prohibition of the use of force and the principle of non-intervention in internal affairs laid down in the UN Charter futile. Thus, the UN practice represents a complete break with the Charter framework regarding these rules, and,

- By consistently approving certain justifications other than those provided in the Charter, the United Nations reactions to individual cases of unilateral military intervention have introduced exceptions to the ban on the use of force and principle of non-intervention in internal affairs other than those provided in the UN Charter. As a result, the UN practice suggests the adaptation of the Charter framework regarding these rules,

are not confirmed by the findings of the research. Since the UN responses have not lent support to justifications other than the exceptions –self-defense and consent- as legal grounds for military intervention in internal affairs, the UN practice does not purport neither to complete break with, nor to the adaptation of the Charter framework. The Charter system thus remains considerably unchanged with regards to the principles governing military intervention in internal affairs in the UN's application.

BIBLIOGRAPHY

UNITED NATIONS DOCUMENTS

UN Charter

UN Yearbooks (1946-2000)

General Assembly Documents

A/2703 (1954), A/3251 (1956), A/5746 (1964), A/6230 (1966), A/6799 (1967), A/PV.2002 (1971), A/PV. 2003 (1971), A/52/165-S/1997/423 (1997), A/56/10 (2001), USUN-122 (1977), PR/7976 (1989).

General Assembly Resolutions

290 (IV) (1949), 375 (IV) (1949), 377 (V) (1950), 378 (V) A (1950), 380 (V) (1950), 498 (V) (1951), 814 (IX) (1954), 820 (IX) (1954), 1004 (ES-II) (1956), 1005 (ES-II) (1956), 1127 (XI) (1956), 1130 (XI) (1956), 1131 (XI) (1956), 1236 (XII) (1957), 1237 (ES-III) (1958), 1375 (XIV) (1959), 1474 (ES-IV) (1960), 1514 (XV) (1960), 1542(XV) (1960), 1598 (XV) (1961), 1599(XV) (1961), 1600 (XV) (1961), 1603 (XV) (1961), 1699(XVI) (1961), 2105(XX) (1965), 2131 (XX) (1965), 2625 (XXV) (1970), 2734 (XXV) (1970), 2793 (XXVI) (1971), 3103 (XXVIII) (1973), 3314 (XXIX) (1974), 3485 (XXX) (1975), 31/29 (1976), 31/33 (1976), 31/91 (1976), 31/53 (1976), 32/10 (1977), 32/14 (1977), 32/42 (1977), 32/154 (1977), 34/22 (1979), 34/103 (1979), ES-6/2 (1980), 35/6 (1980), 35/37 (1980), 36/5 (1981), 36/34 (1981), 36/103 (1981), 37/6 (1982), 37/10 (1982), ES-7/5 (1982), ES-7/6 (1982), ES-7/9 (1982), 37/123 E (1982), 37/43 (1982), 37/37 (1983), 38/3 (1983), 38/7 (1983), 39/5 (1984), 39/50 (1985), 39/72 (1984), 40/7 (1985), 41/6 (1986), 41/31 (1986), 42/3 (1987), 42/18 (1987), 42/22 (1987), 43/11 (1988), 43/19 (1988), 44/22 (1989), 44/240 (1989), 44/43 (1989), 45/232 (1990), 46/147 (1991), 47/154 (1992), 48/478 (1993).

Security Council Documents

S/3730 and Rev. 1 (1956), S/3866 (1957), S/3865 and Add. 1 (1957), S/4053 (1958), S/4382 (1960), S/4835 (1961), S/5032 (1961), S/5033 (1961), S/6310 (1965), S/6328 (1965), S/6346/Rev.1 (1965), S/8759 (1968), S/PV.873 (1960), S/PV.878 (1960), S/PV.1173 (1964), S/PV.1174 (1964), S/PV.1606 (1971), S/PV.1608 (1971), S/PV.1611 (1971), S/PV.1613 (1971), S/8761 (1968), S/8761 and Add. 1 (1968), S/10416 (1971), S/10417 (1971), S/10418 (1971), S/10419 (1971), S/10421 (1971), S/10423 (1971), S/10425 (1971), S/10428 (1971), S/10429 (1971), S/12019 (1976), S/12023 (1976), S/PV.1900-1906 (1976), S/PV.1939 (1976), S/PV. 1941 (1976), S/13011 (1979), S/13027 (1979), S/13162 (1979), S/13204 (1979), S/13228 (1979), S/13729 (1980), S/14767 (1981), S/15185 (1982), S/PV.2108-2112 (1979), S/PV.2114-2118 (1979), S/PV.2129 (1979), S/16070 (1983), S/16077.Rev.1 (1983), S/PV.2487 (1983), S/PV. 2489 (1983), S/16463 (1984), S/PV.2491 (1983), S/PV.2899 (1989), S/21048 (1989), S/22133 (1991), S/22435 (1991), S/22442 (1991), S/22663 (1991), S/PV.2982 (1991), S/23829 and Add. 1-2 (1992), S/23693 and Corr. 1 (1992), S/23886 (1992), S/24179 (1992), S/24343 (1992), S/24480 (1992), S/24859 (1992), S/24868 (1992), S/PV.3138 (1992), S/PV3145 (1992), S/26200 (1993), S/1994/518 (1994), S/1994/640 (1994), S/1994/734 (1994), S/PV.3392 (1994), S/PRST/1997/29 (1997), S/PRST/1997/36 (1997), S/PRST/1997/42 (1997), SG/SM/6481 – AFR/44 (1998), S/PV.3868 (1998), S/PV.3930 (1998), S/PV.3937 (1998), S/PV.3988 (1999), S/1999/328 (1999), S/PV.3989 (1999), S/PV.4011 (1999).

Security Council Resolutions

7 (1946), 82 (1950), 83 (1950), 120 (1956), 129 (1958), 134 (1960), 143 (1960), 145 (1960), 146 (1960), 161 (1961), 199 (1964), 203 (1965), 205 (1965), 221 (1966), 303 (1971), 307 (1971), 353 (1974), 360 (1974), 384 (1975), 387 (1976), 389 (1976), 462 (1980), 508 (1982), 509 (1982), 515 (1982), 516 (1982), 517 (1982), 518 (1982), 520 (1982), 530 (1983), 562 (1985), 569 (1982), 688 (1991), 733 (1992), 746 (1992), 751 (1992), 775 (1992), 788 (1992), 794 (1992), 813 (1993), 856 (1993), 866 (1993), 872 (1993), 918 (1994), 925 (1994), 929 (1994), 1132 (1997), 1160 (1998), 1162 (1998), 1181 (1998), 1199 (1998), 1203 (1998), 1239 (1999), 1244 (1999), 1270 (1999), 1289 (2000).

LEGAL DOCUMENTS

The League Covenant

International Covenant on Civil and Political Rights (1966)

International Covenant on Economic, Social and Cultural Rights (1966)

Helsinki Final Act (1975)

International Court of Justice Reports:
Corfu Channel Case (1949)
Barcelona Traction, Light and Power Co. Case (1970)
Nicaragua Case (1986).

Permanent Court Of International Justice, Ser. B, No. 4 (1923)

BOOKS

Abiew, Francis Kofi. 1999. *The Evolution of the Doctrine and Practice of Humanitarian Intervention.* The Hague: Kluwer Law International.

Adibe, Clement E. 1998. "Strategic Coercion in Post-Cold War Africa." In Lawrence . Freedman, ed., *Strategic Coercion: Concepts and Cases* (Oxford: Oxford University Press, 297- 323.

Akehurst, Michael. 1984. *A Modern Introduction to International Law.* London: George Allen and Unwin.

--------. 1984. "Humanitarian Intervention." In Hedley Bull, ed., *Intervention in World Politics.* New York: Oxford University Pres, 95- 118.

Albrecht-Carrie, Rene. 1973. *A Diplomatic History of Europe Since the Congress of Vienna.* New York: Harper & Row.

Anderson, M. S. 1966. *The Eastern Question 1774-1923.* London: Macmillan.

Arend, Anthony Clark, and Robert J. Beck. 1993. *International Law and the Use of Force, Beyond the UN Charter Paradigm.* London: Routledge.

Asrat, Belatchew. 1991. *Prohibition of Force Under The UN Charter: A Study of Article 2(4).* Uppsala, Sweden: Iustus Förlag.

Axtmann, Roland, and Robert Grant. 2000. "Living in a Global World: Globalization and the Future of Politics." In Trevor C. Salmon, ed., *Issues in International Relations.* London: Routledge, 25- 54.

Bailey, Sydney D. 1994. *The UN Security Council and Human* Rights. New York: St. Martin's Press.

Biersteker, Thomas, and Cynthia Weber (eds.) 1966. *State Sovereignty as Social Construct.* Cambridge: Cambridge University Press.

Bowett, Derek W. 1958. *Self-Defense in International Law.* New York: Frederick A. Praeger.

--------. 1974. "The Interrelation of Theories of Intervention and Self-Defense." In John Norton Moore, ed., *Law and Civil War in the Modern World.* Baltimore: The Johns Hopkins University Pres, 38- 50.

--------. 1986. "The Use of Force for the Protection of Nationals Abroad." in Antonio Cassese, *The Current Legal Regulation of the Use of Force.* In Arend, Anthony Clark, and Robert J. Beck. 1993. *International Law and the Use of Force, Beyond the UN Charter Paradigm.* London: Routledge, 107.

Brierly, J. L. 1942. *The Law of Nations, An Introduction to the International Law of Peace.* London: Oxford University Press.

--------. 1963. *The Law of Nations.* H. Waldock, ed., London: Oxford University Press.

Brownlie, Ian. 1963. *International Law and the Use of Force by States.* Oxford: Clarendon Press.

--------. 1974. "Humanitarian Intervention." In John Norton Moore, ed., *Law and Civil War in the Modern World.* Baltimore: The Johns Hopkins University Press, 217- 228.

--------. 1990. *Principles of Public International Law.* Oxford: Oxford University Press.

Bull, Hedley.1966. "The Grotian Conception of International Society." In Herbert Butterfield and Martin Wright, eds., *Diplomatic Investigations.* London: George Allen & Unwin, 51-73.

--------. 1984. "Introduction." In Hedley Bull, ed., *Intervention in World Politics.* New York: Oxford University Press, 1-6.

Calvocoressi, Peter. 1996. *World Politics Since 1945.* New York: Longman.

Cassese, Antonio. 1994. *International Law in a Divided World.* New York: Oxford University Press.

--------.1995. *Self-Determination of Peoples, A Legal Reappraisal.* Cambridge: Cambridge University Press.

Castel, J. G. 1976. *International Law.* Toronto: Butterworths.

Clark, Jeffrey. 1993. "Debacle in Somalia: Failure of the Collective Response." In Lori Fisler Damrosch, ed., *Enforcing Restraint: Collective Intervention in Internal Conflicts*: New York: Council on Foreign Relations, 205- 239.

Claude, Jr., Inis L. 1966. "Collective Legitimization as a Political Function of the United Nations," *International Organization*, 20:3. Reprinted in Claude, Jr. Inis L. 1988. *State and the Global System: Politics, Law and Organization.* London: MacMillan Pres, 145- 159.

--------. 1984. *Swords Into Plow Shares, The Problems and Progress of International Organization.* New York: Random House.

Combs, Jerald A. 1986. *The History of American Foreign Policy, Vol. I: To 1917.* New York: Newbery Award Records, Inc.

Çelik, Edip F. 1982. *Milleleraras Hukuk, İkinci Cilt (International Law, Vol. II).* İstanbul: Filiz Kitabevi.

Damrosch, Lori Fisler. 1991. "Commentary on Collective Military Intervention to Enforce Human Rights." In Lori Fisler Damrosch and David J. Scheffer, eds., *Law and Force in the New International Order.* Boulder: Westview Press, 215- 231.

Davidson, Scott. 1987. *Grenada: A Study in Politics and the Limits of International Law.* Aldershot, England: Avebury.

Donnelly, Jack. 1999. "The Social Construction of International Human Rights." In Tin Dunne and Nicholas J. Wheeler, eds., *Human Rights in Global Politics.* Cambridge: Cambridge University Press, 71- 102.

Dunn, D. Elwood. 1998. "Liberia's Internal Responses to ECOMOG's Interventionist Efforts." In Karl P. Magyar and Earl Conteh-Morgan, eds., *Peacekeeping in Africa: ECOMOG in Liberia.* London: MacMillan Press Ltd., 76- 105.

Falk, Richard A. 1968. *Legal Order in a Violent World.* Princeton: Princeton University Press.

--------. 1984. "Intervention and National Liberation" In Hedley Bull, ed., *Intervention in World Politics.* New York: Oxford University Press, 119- 133.

---------.1997. "The Right of Self-Determination Under International Law: The Coherence of Doctrine Versus the Incoherence of Experience." In Wofgang Danspeckgruber, and Arthur Watts, eds., *Self-Determination and Self-Administration: A Sourcebook* (Boulder: Lynne Rienner Publishers, Inc., 47- 63.

Farer, Tom J. 1971. "Law and War." In Cyril E. Black and Richard A. Falk, eds., *The Future of the International Legal Order,* Volume 3. Princeton: Princeton University Press, 15-78.

--------. 1991. "An Inquiry into the Legitimacy of Humanitarian Intervention." In Lori Fisler Damrosch and David J. Scheffer, eds., *Law and Force in the New International Order* . Boulder: Westview Press, 185- 199.

Finnemore, Martha. 1996. "Constructing Norms of Humanitarian Intervention." In Peter Katzenstein, ed., *The Culture of National Security: Norms and Identity in World Politics.* New York: Columbia University Press, 153- 185.

Forsythe, David P. 1990. *The Politics of International Law: US Foreign Policy Reconsidered.* Boulder: Lynne Rienner Publishers.

Freedman, Lawrence, and David Boren. 1992. "'Safe Havens' for Kurds in Post-War Iraq." In Nigel S. Rodley, ed., *To Loose the Bands of Wickedness: International Intervention in Defence of Human Rights.* London: Brassey's, 43- 92.

Garrett, Stephan A. 1999. *Doing Good and Doing Well: An Examination of Humanitarian Intervention. Westport,* USA: Praeger Publishers.

Geldenhuys, Deon. 1998. *Foreign Political Engagement: Remaking States in the Post-Cold War World.* London: Macmillan Pres.

Glahn, Gerhard von. 1992. *Law Among Nations, An Introduction to Public International Law.* New York: Macmillan Publishing Company.

Goodrich, Leland M., Edvard Hambro, Anne Patricia Simons. 1969. *Charter of the United Nations: Commentary and Documents.* New York: Columbia University Press.

Goodrich, Leland M. and Edvard Hambro. 1954. *Birleşmiş Milletler Antlaşması: Şerh ve Vesikalar (Charter of the United Nations: Commentary and Documents).* Lütem, İlhan, trans., İstanbul: Fakülteler Matbaası.

Grotius, Hugo. 1967. *Savaş ve Barış Hukuku* (De Iure Belli Ac Pacis / On the Law of War and Peace). Meray, Seha L. trans. Ankara: Ankara Üniversitesi Basımevi.

Gündüz, Aslan. 2000. *Milletlerarası Hukuk (International Law).* İstanbul: Beta Basım A.Ş.

Haas, Ernst B. 1993. *Beware the Slippery Slope: Notes Toward the Definition of Justifiable Intervention.* Policy Papers in International Affairs No. 42. Berkeley: University of California.

Haass, Richard N. 1999. *Intervention: The Use of American Military Force in the Post-Cold War World.* Washington DC: Brookings Institution Press.

Hall, W. E. A. 1924. *Treatise on International Law.* A. Pearce Higgins, ed., Oxford: Clarendon Press. In Vincent, R.J. 1974. *Nonintervention and International Order.* Princeton: Princeton University Press, 288.

Hargrove, John Lawrence. 1991. "Intervention by Invitation and the Politics of the New World Order." In Lori Fisler Damrosch and David J. Scheffer, eds., *Law and Force in the New International Order.* Boulder: Westview Press, 113-126.

Harris, D. J. 1998. *Cases and Materials on International Law.* London: Sweet & Maxwell.

Heuser, Beatrice. 1997. "Sovereignty, Self-Determination and Security: New World Orders in the Twentieth Century." In Sohail H. Hashmi, ed., *State Sovereignty: Change and Persistence in International Relations.* University Park: The Pennsylvania State University Press, 81- 104.

Henkin, Louis. 1979. *How Nations Behave: Law and Foreign Policy.* New York: Columbia University Press.

--------.1991. "Use of Force: Law and US Policy." In Right v. Might, *International Law and the Use of Force.* New York: Council on Foreign Relations Press, 37- 69.

Higgins, Rosalyn. 1963. *The Development of International Law Through The Political Organs of the United Nations. London*: Oxford University Press.

--------. 1972. "International Law and Civil Conflict." In Evan Luard, ed., *The International Regulation of Civil Wars.* New York: New York University Press, 169- 186.

--------. 1994. *Problems and Process: International Law and How We Use It.* New York: Oxford University Pres.

Hilaire, Max. 1997. *International Law and the United States Military Intervention in the Western Hemisphere.* The Hague: Kluwer Law International.

Hiller, Tom. 1998. *Sourcebook on Public International Law.* London: Cavendish Publishing Limited.

Hinsley, F. H. 1966. *Sovereignty.* New York: Basic Books.

Hoffmann, Stanley. 1984. "The Problem of Intervention." In Hedley Bull, ed., *Intervention in World Politics.* New York: Oxford University Press, 7-28.

Holbraad, Carsten. 1970. *The Concert of Europe: A Study in German and British International Theory 1815-1914.* Harlow: Longmans.

Hsiung, James C. 1997. *Anarchy and Order: The Interplay of Politics and Law in International Relations.* Boulder: Lynne Rienner Publishers, Inc.

Jennings, Robert, and Arthur Watts. 1992. *Oppenheim's International Law*, Volume I. Harlow, England: Longman.

Karaosmanoğlu, Ali L. 1981. *İç Çatışmaların Çözümü ve Uluslararası Örgütler* (The Resolution of Internal Conflicts and the International Organizations). İstanbul: Boğaziçi Üniversitesi.

-------- 2002. "UNFICYP and The Problem of Consent." In Reşat Arım, ed., *Cyprus and International Law.* Ankara: Foreign Policy Institute, 89- 120.

Kelsen, Hans. 1951. *The Law of the United Nations.* London: Stevens & Sons Limited.

--------. 1952. *Principles of International Law.* New York: Rinehart & Company.

Kerr, Malcolm. 1972. "The Lebanese Civil War." In Evan Luard, ed., *The International Regulation of Civil Wars.* New York: New York University Press, 65-90.

Keskin, Funda. 1998. *Uluslararası Hukukta Kuvvet Kullanma: Savaş, Karışma ve Birleşmiş Milletler* (The Use of Force in International Law: War, Intervention and the United Nations). Ankara: Mülkiyeliler Birliği Vakfi Yayınları.

Kissinger, Henry. 1994. *Diplomacy.* New York: Simon & Schuster.

LaFeber, Walter. 1989. *The Panama Canal.* New York: Oxford University Press.

--------. 1994. *The American Age, US Foreign Policy At Home and Abroad, 1750 to the Present, Second Edition.* New York: W. W. Norton & Company.

Lauterpacht, Hersch (ed.) 1955. *L. Oppenheim, International Law: A Treatise, Vol. I – Peace.* London: Longmans, Green & Co.

Lillich, Richard B. 1974. "Humanitarian Intervention: A Reply to Ian Brownlie and A Plea For Constructive Alternatives." In John Norton Moore, ed., *Law and Civil War in the Modern World.* Baltimore: The Johns Hopkins University Press, 229- 251.

Lipson, Charles. 1994. "Is the Future of Collective Security Like the Past?." In George W. Downs, ed., *Collective Security Beyond the Cold War.* Ann Arbor: The University of Michigan Press, 105- 131.

Little, Richard. 1993. "Recent Literature on Intervention and Non-Intervention." In Ian Forbes and Mark Hoffman, eds., *Political Theory, International Relations, and the Ethics of Intervention.* London: The Macmillan Press Ltd., 13-31.

Lyons, Gene M. and Michael Mastanduno.1995. "Introduction: International Intervention, State Sovereignty, and the Future of International Society." In Gene M. Lyons and Michael Mastanduno, eds., *Beyond Westphalia? State Sovereignty and International Relations.* Baltimore: The Johns Hopkins University Press, 1- 18.

Luard, Evan.1972. "Civil Conflicts in Modern International Relations." In Evan Luard, ed., *The International Regulation of Civil Wars.* New York: New York University Press, 7- 25.

--------. 1972. "The Civil War in Congo." In Evan Luard ed., *The International Regulation of Civil Wars*. New York: New York University Press, 108-124.

--------. 1984. "Collective Intervention." In Hedley Bull, ed., *Intervention in World Politics*. New York: Oxford University Press, 157-179.

Magyar, Karl P. 1998. "ECOMOG's Operations: Lessons for Peacekeeping." In Karl P. Magyar and Earl Conteh-Morgan, eds., *Peacekeeping in Africa: ECOMOG in Liberia*. London: MacMillan Press Ltd., 52- 75.

Malcolm, Noel. 1998. *Kosovo: A Short History*. London: Macmillan.

McCormack, Timothy L. H. 1996. *Self-Defense in International Law, The Israeli Raid on the Iraqi Nuclear Reactor*. New York: St. Martin's Press.

McCoubrey, Hilaire, and Justin Morris. 2000. *Regional Peacekeeping in the Post-Cold War Era*. The Hague: Kluwer Law International.

McDougal, M. S. and F. P. Feliciano.1961. *Law and Minimum Public Order*. In Belatchew, Asrat.1991. *Prohibition of Force Under The UN Charter: A Study of Article 2(4)*. Uppsala, Sweden: Iustus Förlag, 146.

McNemar, Donald W. 1971. "The Postindependence War in the Congo." In Richard A. Falk, ed. *The International Law of Civil War*. Baltimore: The Johns Hopkins University Press, 244-302.

Medlicott, William Norton. 1969. *Bismarck, Gladstone, and the Concert of Europe*. New York: Greenwood Press.

Meray, Seha L. 1952. *Devletler Hukukunda Birleşmiş Milletler Antlaşması ve Tatbikatına Göre Milli Yetki Meselesi (The Issue of Domestic Jurisdiction According to the United Nations Charter and Practice in International Law)*. Ankara: İstiklal Matbaacılık ve Gazetecilik Koll. Ort..

--------.1965. *Devletler Hukukuna Giriş, İkinci Cilt (Introduction to International Law, Vol. II)*. Ankara: Ankara Üniversitesi Basımevi.

Merrill, Dennis and Paterson, Thomas G. (eds.) 2000. *Major Problems in American Foreign Relations, Vol. I: To 1920.* New York: Houghton Mifflin Company.

Mill, John Stuart. 1859. *A Few Words on Non-Intervention.* In G. Himmelfarb, ed., 1962. *Essays on Politics and Culture.* In Murphy, Sean D. 1996. *Humanitarian Intervention, The United Nations in an Evolving World Order.* Philadelphia: University of Pennsylvania Press, 46.

Moore, John Norton. 1974. "Toward an Applied Theory for the Regulation of Intervention." In John Norton Moore, ed., *Law and Civil War in the Modern World.* Baltimore: The Johns Hopkins University Pres, 3- 37.

Mullerson, Rein. 1991. "Intervention by Invitation." In Lori Fisler Damrosch and David J. Scheffer, eds., *Law and Force in the New International Order.* Boulder: Westview Press, 127- 134.

Murphy, Sean. 1996. *Humanitarian Intervention, the United Nations in an Evolving World Order.* Philadelphia: University of Pennsylvania Press.

Ortega, Martin. 2001. *Military Intervention and the European Union*, Chaillot Paper 45. Paris: Institute for Security Studies.

Otte, Thomas G. 1995. "Of Congresses and Gunboats: Military Intervention in the Nineteenth Century." In Andrew M. Dorman and Thomas G. Otte, eds. *Military Intervention: From Gunboat Diplomacy to Humanitarian Intervention.* Hants, England: Dartmouth, 19- 52.

Paterson, Thomas G., J. Garry Clifford, Kenneth J. Hagan. 2000. *American Foreign Relations, Vol. II, A History Since 1895.* New York: Houghton Mifflin Company.

Pazarcı, Hüseyin. 2000. *Uluslararası Hukuk Dersleri*, IV. Kitap (Lectures in International Law, Book IV). Ankara: Turhan Kitabevi.

Perkins, Dexter.1962. *The American Approach to Foreign Policy* (Cambridge: Harvard University Pres.

--------. 2000. "Defense of Commerce and Ideals." In Dennis Merrill and Thomas G. Paterson, eds., *Major Problems in American Foreign Relations, Vol. I: To 1920.* New York: Houghton Mifflin Company, 174- 181.

Pratt, Julius W., Vincent P. De Santis, Joseph M. Siracusa. 1980. *A History of United States Foreign Policy.* USA: Prentice-Hall, Inc..

Ragazzi, Maurizio. 1997. *The Concept of International Obligations Erga Omnes.* Oxford: Clarendon Press.

Rajan, M. S. 1954. "United States Attitude Towards Domestic Jurisdiction in the United Nations," *International Organization* (Boston) 13 (1). Reprinted in Rajan, M. S. 1995. *United Nations and World Politics.* New Delhi: Har-Anand Publications, 202- 236.

--------. 1960. "Defining 'Domestic Jurisdiction': Is It Necessary? Is It Feasible? Is it Useful?," *The Indian Journal Of International* Law (New Delhi), 1(1). Reprinted in Rajan, M. S. 1995. *United Nations and World Politics.* New Delhi: Har-Anand Publications, 146- 161.

Ramsbotham, Oliver and Tom Woodhouse. 1996. *Humanitarian Intervention in Contemporary Conflict: A Reconceptualization.* Cambridge: Polity Pres.

Reisman, W. Michael. 1971. "Sanctions and Enforcement." In Cyril E. Black and Richard A. Falk, eds., *The Future of the International Legal Order,* Volume 3. Princeton: Princeton University Press, 273-335.

Reisman, W. Michael and Myres McDougal. 1973. "Humanitarian Intervention to Protect the Ibos." In Richard B. Lillich, ed., *Humanitarian Intervention and the United Nations.* Charlottesville: University Press of Virginia, 167-195.

Reiss, Hans (ed.) 1991. *Kant, Political Writings.* Nisbet H. B. trans. Cambridge: Cambridge University Press.

Rich, Norman. 1992. *Great Power Diplomacy: 1814-1914.* New York: McGraw-Hill.

Roberts, Adam. 1996. *Humanitarian Action in War,* Adelphi Paper 305. New York: Oxford University Press.

Rodley, Nigel S. 1992. "Collective Intervention to Protect Human Rights and Civilian Populations: The Legal Framework." In Nigel S. Rodley, ed., *To Loose the Bands of Wickedness: International Intervention in Defence of Human Rights*. London: Brassey's, 14- 42.

Ross, Alf. 1950. *Constitution of the United Nations.* Copenhagen: Ejnar Munksgaard, 129. In Vincent, R. J. 1974. *Nonintervention and International Order* Princeton: Princeton University Press, 236.

--------.1950. *Constitution of the United Nations* (Copenhagen: Ejnar Munksgaard, 130. In Rajan, M. S. 1995. *United Nations and World Politics.* New Delhi: Har-Anand Publications, 217.

Russett, Bruce. 1993. *Grasping the Democratic Peace, Principles for a Post-Cold War World.* Princeton: Princeton University Press.

Schachter, Oscar. 1974. "The United Nations and Internal Conflict." In John Norton Moore, ed., *Law and Civil War in the Modern World.* Baltimore: The Johns Hopkins University Press, 401- 445.

--------.1991. *International Law in Theory and Practice.* Dordrecht, The Netherlands: Martinus Nijhoff Publishers.

Schwebel, Stephen M. 1974. "Wars of Liberation as Fought in the UN Organs." In John Norton Moore, ed., *Law and Civil War in the Modern World.* Baltimore: The Johns Hopkins University Press, 446-457.

Shaw, Malcolm N. 1991. *International Law, Third Edition.* Cambridge: Grotius Publications Limited.

Simma, Bruno (ed.) 1994. *The Charter of the United Nations, A Commentary.* Oxford: Oxford University Press.

Slaughter Burley, Anne-Marie and Carl Kaysen. 1993. "Introductory Note: Emerging Norms of Justified Intervention." In Laura W. Reed and Carl Kaysen, eds., *Emerging Norms of Justified Intervention.* Cambridge, MA: American Academy of Arts and Sciences, 7- 14.

Slim, Hugo, and Emma Visman. 1995. "Evacuation, Intervention and Retaliation: United Nations Humanitarian Operations in Somalia, 1991-1993." In John Hariss, ed., *The Politics of Humanitarian Intervention.* London: Pinter Publishers, 145- 166.

Sloan, Blaine. 1991. *United Nations General Assembly Resolutions In Our Changing World.* New York: Transnational Publishers, Inc.

Sofaer, Abraham D. "The Panamanian Revolution: Diplomacy, War and Self-Determination in Panama," Remarks to the 84th Convention of the American Society of International Law. In Ehrlich, Thomas and Mary Ellen O'Connell. 1993. *International Law and the Use of Use.* Boston: Little, Brown and Co., 99.

Stromseth, Jane E. 1993. "Iraq's Repression of its Civilian Population: Collective Responses and Continuing Challenges." In Lori Fisler Damrosch, ed., *Enforcing Restraint: Collective Intervention in Internal Conflicts*: New York: Council on Foreign Relations, 77-117.

Tanca, Antonio. 1993. *Foreign Armed Intervention in Internal Conflict.* The Netherlands: Martinus Nijhoff Publishers.

Tarr, Byron S. 1998. "Extra-Africa Interests in the Liberian Conflict." In Karl P. Magyar and Earl Conteh-Morgan, eds., *Peacekeeping in Africa: ECOMOG in Liberia.* London: MacMillan Press Ltd., 150- 172.

Temperley, Harold. 1964. *England and the Near East, The Crimea.* London: Frank Cass & Co., Ltd..

Teson, Fernando R. 1987. *Humanitarian Intervention: An Inquiry into Law and Morality.* New York: Transnational Publications.

--------. 1998. *A Philosophy of International Law.* Boulder: Westview Press.

The Blue Helmets: A Review of United Nations Peace-Keeping. 1996. New York: The United Nations.

Thomas, Ann Van Wyen, and Thomas, A. J. Jr. 1956. *Non-intervention, The Law and Its Import in the Americas.* Dallas: Southern Methodist University Press.

Thomson, David. 1986. *Europe Since Napoleon.* New York: Penguin Books.

Toluner, Sevin. 1977. *Kıbrıs Uyuşmazlığı ve Milletlerarası Hukuk (The Cyprus Conflict and International Law).* İstanbul: Fakülteler Matbaası.

Vattel, Emmerich de. 1758. *The Law of Nations or the Principles of Natural Law Applied to the Conduct and to the Affairs of Nations and of Sovereigns.* In Thomas, Ann Van Wyen, and A. J. Thomas, Jr. 1956. *Non-intervention, The Law and Its Import in the Americas.* Dallas: Southern Methodist University Press, 6.

Vattel, Emmerich de. 1758. *The Law of Nations or the Principles of Natural Law Applied to the Conduct and to the Affairs of Nations and of Sovereigns*, In Vincent, R. J. 1974. *Nonintervention and International Order.* Princeton: Princeton University Press, 30.

Vattel, Emmerich de. 1758. *The Law of Nations or the Principles of Natural Law Applied to the Conduct and to the Affairs of Nations and of Sovereigns.* In Murphy, Sean D. 1996. *Humanitarian Intervention, The United Nations in an Evolving World Order.* Philadelphia: University of Pennsylvania Press, 46.

Vincent, R. J. 1974. *Nonintervention and International Order.* Princeton: Princeton University Press.

Waldock, Sir Humphrey. 1952. "The Regulation of the Use of Force by Individual States in International Law," In Dinstein, Yoram. 1994. *War, Aggression and Self-Defence.* Cambridge: Cambridge University Press, 226.

Walzer, Michael. 1977. *Just and Unjust Wars: A Moral Argument with Historical Illustrations.* New York: Basic Books, Inc.

Wedgewood, Ruth. 1991. "Commentary on Intervention by Invitation" In Lori Fisler Damrosch and David J. Scheffer, eds., *Law and Force in the New International Order.* Boulder: Westview Press, 135- 139.

Weller, M. (ed.) 1994. *Regional Peace-Keeping and International Enforcement: The Liberian Crisis.* Cambridge: Cambridge University Press.

Wheeler, Nicholas, and Justin Morris. 1996. "Humanitarian Intervention and State Practice at the End of the Cold War." In Rick Fawn and Jeremy Larkins, eds., *International Society After the Cold War: Anarchy and Order Reconsidered.* London: Macmillan Press, 135- 171.

Wheeler, Nicholas J. 2000. *Saving Strangers, Humanitarian Intervention in International* Society. Oxford: Oxford University Press.

Wilcox , Francis O. and Carl M. Marcy. 1955. *Proposals For Changes in the United Nations.* In Rajan, M. S. 1995. *United Nations and World Politics.* New Delhi: Har-Anand Publications, 164.

Wippman, David. 1993. "Enforcing the Peace: ECOWAS and the Liberian Civil War." In Lori Fisler Damrosch, ed., *Enforcing Restraint: Collective Intervention in Internal Conflicts.* New York: Council on Foreign Relations Press, 157- 204.

Wolff, Christian. 1964. *Jus Gentium Methodo Scientifica Pertractatum*, 1764. Joseph H. Drake, trans. New York: Oceana Publications Inc.

ARTICLES

Akehurst, Michael. 1977. "The Use of Force to Protect Nationals Abroad," *International Relations* 5 (3): 3-23.

Beloff, Max. 1968. "Reflections on Intervention," *Journal of International Affairs* 22(2): 198- 207.

Blokker, Niels. 2000. "Is the Authorization Authorized? Powers and Practice of the UN Security Council to Authorize the Use of Force by 'Coalitions of the Able and Willing'," *European Journal of International Relations* 11 (3): 541-568.

Bohan, R. T. 1966. "The Dominican Case: Unilateral Intervention," *American Journal of International Law* 60 (4): 809-812.

Boyle, Francis A. 2002. "Humanitarian Intervention Under International Law," *Review of International Affairs* 1 (4): 45- 56.

Briggs, Herbert W. 1959. "The United States and the International Court of Justice: A Re-Examination," *American Journal of International Law* 53 (2): 301-318.

Burkhalter, Holly J. 1994/1995. "The Question of Genocide: The Clinton Administration and Rwanda," *World Policy Journal* 11 (4): 44-54.

Cassese, Antonio. 1999. "A Follow-Up: Forcible Humanitarian Countermeasures and Opinio Necessitatis," *European Journal of International Law* 10 (4): 791-799.

--------. 1999. "Ex Iniuria Ius Oritur: Are We Moving towards International Legitimation of Forcible Humanitarian Countermeasures in the World Community?," *European Journal of International Law* 10 (1): 23- 30.

Charney, Jonathan I. 1999. "Anticipatory Humanitarian Intervention in Kosovo," *American Journal of International Law* 93 (4): 834- 840.

Chopra, Jarat and Thomas G. Weiss. 1992. "Sovereignty is No Longer Sacrosanct: Codifying Humanitarian Intervention," *Ethics and International Affairs* 6: 95-117.

D'Amato, Anthony. 1990. "The Invasion of Panama Was a Lawful Response to Tyranny," *American Journal of International Law* 84 (2): 516-524.

Donnelly, Jack. 1993. "Human Rights, Humanitarian Crisis, and Humanitarian Intervention," *International Journal* 48 (4): 607- 640.

Doyle, Michael. 1983. "Kant, Liberal Legacies, and Foreign Affairs, part 1," *Philosophy and Public Affairs* 12(3): 205-235.

--------.1983. "Kant, Liberal Legacies, and Foreign Affairs, part 2," *Philosophy and Public Affairs* 12(4): 323-353.

--------.1986. "Liberalism and World Politics," *American Political Science Review* 80(4):1151-1161.

Falk, Richard. 1999. "Kosovo, World Order, and the Future of International Law," *American Journal of International Law* 93 (4): 847- 856.

Farer, Tom J. 1990. "Panama: Beyond The Charter Paradigm," *American Journal of International Law* 84(2): 503- 515.

Fenwick, C.G. 1966. "The Dominican Republic: Intervention or Collective Self-Defense," *American Journal of International Law* 60(1): 64-67.

Finnemore, Martha and Kathryn Sikkink. 1998. "International Norm Dynamics and Political Change," *International Organization* 52(4): 887- 917.

Franck, Thomas and Nigel, Rodley. 1973. "After Bangladesh: The Law of Humanitarian Intervention by Military Force," *American Journal of International Law* 67(2): 275- 305.

Freedman, Lawrence. 2000. "Victims and Victors: Reflections on the Kosovo War," *Review of International Studies* 26 (3): 335-358.

Greenwood, Christopher. 1993. "Is There a Right of Humanitarian Intervention?," *The World Today,* 49 (2): 34- 40.

Guicherd, Catherine. 1999. "International Law and the War in Kosovo," *Survival* 41 (2): 19- 34.

Henkin, Louis. 1999. "Kosovo and the Law of Humanitarian Intervention," *American Journal of International Law* 93 (4): 824- 828.

Jackson, Robert. 1999. "Sovereignty in World Politics: A Glance At the Conceptual and Historical Landscape," *Political Studies* 47(3): 431- 456.

Jennings, R. Y. 1938. "The Caroline and McLeod Cases," *American Journal of International Law* 32: 82- 99.

Jones, Bruce D. 1995. "'Intervention Without Borders': Humanitarian Intervention in Rwanda, 1990-94," *Journal of International Studies* 24 (2): 225- 249.

Karaosmanoğlu, Ali L. 1972. "Birleşmiş Milletler Andlaşmasının 2 inci Madde 7inci Fıkrasının İç Savaşlar Bakımından Yorumu" (The Interpretation of Article 2(7) of the United Nations Charter With Respect to Civil Wars), *Siyasal Bilgiler Fakültesi Dergisi (Journal of Faculty of Political Science)* 3: 185- 200.

Laberge, Pierre. 1995. " Humanitarian Intervention: Three Ethical Positions," *Ethics and International Affairs* 9: 15-35.

Mayall, James. 1991. "Non-intervention, Self-determination and the 'New World Order'," *International Affairs* 67 (3): 421- 429.

Nanda, Ved P. 1990. "The Validity of United States Intervention in Panama Under International Law," *American Journal of International Law* 84(2): 494- 503.

Parekh, Bhikhu. 1997. "Rethinking Humanitarian Intervention," *International Political Science Review* 8(1): 49- 69.

Pearson, Frederic S. 1974. "Foreign Military Interventions and Domestic Disputes," *International Studies Quarterly* 18(3): 259- 290.

Plaut, Martin. 1994. "Rwanda –Looking Beyond the Slaughter," *The World Today* 50 (8-9): 149- 153.

Raymond, G. A. and C. W. Kegley. 1987. "Long Cycles and Internationalized Civil War," *Journal of Politics* 49: 481- 499.

Roberts, Adam. 1993. "Humanitarian War: Military Intervention and Human Rights," *International Affairs* 69 (3): 429- 449.

--------. 1999. "NATO's 'Humanitarian' War over Kosovo," *Survival* 41 (3): 102-123.

Robson, John M. (ed.) *The Collected Works of John Stuart Mill, Volume 21.* In Varouxakis, Georgios. 1997. "John Stuart Mill on Intervention and Non-Intervention," *Journal of International Studies* 26 (1): 57- 76.

Rosenau, James N. 1968. "The Concept of Intervention," *Journal of International Affairs* 22(2): 165-176.

--------.1969. "Intervention as a Scientific Concept," *Journal of Conflict Resolution* 13(2): 149-171.

Sadurska, Romano. 1988. "Threats of Force," *American Journal of International Law* 82(2): 239- 267.

Schachter, Oscar. 1984. "The Legality of Pro-Democratic Invasion," *American Journal of International Law* 78 (3): 645- 650.

Shearer, David. 1997. "Exploring the Limits of Consent: Conflict Resolution in Sierra Leone," *Journal of International* Studies 26 (3): 845-860.

Simma, Bruno. 1999. "NATO, the UN and the Use of Force: Legal Aspects," *European Journal of International Law* 10 (1): 1- 22.

Solana, Javier. 1999. "NATO is justified and determined," *New Perspectives Quarterly* 16 (3): 49-50.

Weiss, Thomas G. 1994. "Humanitarian Interventions in a New Era," *World Policy Journal* 11(1): 59- 68.

Wright, Quincy. 1957. "Intervention, 1956," *American Journal of International Law* 51(2): 257- 276.

--------. January 1959. "United States Intervention in the Lebanon," *American Journal of International Law* 53(1): 112- 125.

Department of State Bulletin. 1958.

Department of State Bulletin. 1965. 52.

Department of State Bulletin. 1965. 53.

Department of State Bulletin. 1983. 83.

Department of State Bulletin. 1985. 85.

Public Papers of the Presidents of the United States: George Bush, Vol.1. 1992. Washington DC: US Government Printing Office.

Public Papers of the Presidents of the United States: George Bush, Vol. 2. 1993. Washington DC: US Government Printing Office.

NEWS SOURCES

New York Times, 6 August 1990.

New York Times, 6 May 1994.

New York Times, 18 May 1994.

New York Times, 18 May 1994.

New York Times, 16 June 1994.

New York Times, 24 June 1994.

New York Times, 24 March 1999.

Washington Post, 6 August 1990.

Washington Post, 30 April 1994.

Washington Post, 2 May 1994.

Washington Post, 18 May 1994.

Washington Post, 22 August 1994.

Washington Post, 24 March 1999.

INTERNET SOURCES

CSCE. *Document of the Moscow Meeting of the Conference On the Human Dimension of the CSCE.* 10 September-15 October 1991. http://www.osce.org/docs/english/1990-1999/hd/mosc91e.htm. http://www.oecs.org/assets/OECS_Treaty.pdf

Laitin, David D. 2001. "Somalia: Intervention in Internal Conflict," Unpublished Paper. Stanford University, http:/www.puaf.umd.edu/CISSM/Projects/NIC/Laitin.html.

Malanczuk, Peter. 1991."The Kurdish Crisis and Allied Intervention in the Aftermath of the Second Gulf War," *European Journal of International Law* 2 (2): 1-10, http://www.ejil.org/journal/Vol2/No2/art6-01.html.

Mertus, Julie. "The Imprint of Kosovo on the Law of Humanitarian Intervention." Unpublished Paper, http://www.nsulaw.nova.edu/student/ organizations/ILSAJournal/6-2/Mertus%206-2.html.

Pravda. 29 December 1979, www.cnn.com/SPECIALS/cold.war/episodes/20/1st.draft/pravda.html.

Singleton, Seth. "The Soviet Invasion of Afghanistan," www.airpower.maxwell.af.mil/airchronicals/aureview/1981/mar-apr/singleton.html.

Solana, Javier. Press Conference at NATO Headquarters in Brussels.13 October 1998.
http://www.nato.int/docu/speech/1998/s981013b.hm.
http://secretary.state.gov//www//statements/1999/990726b.html.

Keesing's Record of World Events (http://www.keesings.com)

"Independence Agreements with Chad, Central African Republic, Congo and Gaboon," 6 (August 1960).

"Achievement of Independence as Republic of the Congo - Congolese Government formed by M. Lumumba. - M. Kasavubu Becomes Head of State," 6 (August 1960).

"Proclamation of Congolese Independence. - King Baudouin's Vidit to Leopoldville," 6 (August 1960).

"Incidents Before Outbreak of Mutiny," "Outbreak of Mutiny. - Measures to Meet Mutineers' Demands – First Belgian Military Actions," 6 (August 1960).

"Events of July 10," 6 (September 1960).

"Events of July 11," 6 (September 1960).

"Events of July 13," 6 (September 1960).

"Events of July 14," 6 (September 1960).

"First Security Council Debate," 6 (September 1960).

"Second Security Council Debate and Resolution," 6 (September 1960).

"Developments Preceding First Security Council Meeting," 6 (September 1960).

"Pro-invasion Developments. - Indian and Portuguese Allegations and Counter-allegations. - Mr. Nehru's Statements. - U Thant's Appeal for Indo-Portuguese Negotiations – Replies by Dr. Salazar and Mr. Nehru," 8 (March 1962).

"Security Council Meeting on Goa Crisis - Mr. Stevenson's Criticism of Indian Action. - Soviet Veto of Western Resolution," 8 (March 1962).

"Post-invasion Developments. – Goa joins Indian Union. - Statements by Air. Nehru and Mr. Krishna Menon. – Mr. Rajagopalachari's Criticism of Military Action," 8 (March 1962).

"Reactions in Other Countries," 8 (March 1962).

"The Invasion of Goa," 8 (March 1962).

"Abortive Military Coup – Intervention by French Forces," 10 (April 1964).

"Communist and African Reactions to Stanleyville Operation," 11 (February 1965).

"Security Council Debates," 11 (July 1965).

"Outbreak of Civil War. - Fighting between Pro-Bosch and Anti-Bosch Factions – Formation of Military Junta," 11 (July 1965).

"Landing of American Troops. - Evacuation of U.S. and Foreign Nationals. - Arrival of O.A.S. Peace-Mission. – Temporary Cease-Fire," 11 (July 1965).

"President Johnson's Warning of Communist Threat in the Dominican Republic – Reinforcement of American Troops," 11 (July 1965).

"Security Council Debates – British and French Reactions to Dominican Situation – French Criticisms of US Military Intervention in Santo Domingo," 11 (July 1965).

"Ex-President Bosch Repudiates US Allegations of Communist Direction of Rebellion – Latin American Reactions to US Military Intervention," 11 (July 1965).

"Senator Fulbright's Criticisms of US Intervention in Dominican Republic," 11 (September 1965).

"The Soviet Invasion," 14 (September 1968).

"French Military Assistance against Rebels," 14 (December 1968).

"Clashes on East Pakistan Border, September-November," 17 (December 1971).

"The Refugee Situation," 17 (December 1971).

"US Support for Pakistan - Suspension of Military and Economic Aid to India," 18 (February 1972).

"Recognition of Bangladesh by Soviet Union, Britain and Other States. - Withdrawal of Pakistan From the Commonwealth," 18 (February 1972).

"Hostilities between MPLA, FNLA and UNITA," 21 (December 1975).

"Achievement of Independence – State of Virtual Civil War – International Involvement – Establishment of Separate Governments by MPLA and FNLA-UNITA - Unilateral Declaration of Independence by Cabinda," 21 (December 1975).

"Control of Luanda gained by MPLA, Participation of UNITA Forces in Fighting," 21 (December 1975).

"Coup by UDT," 22 (January 1976).

"Outbreak of Civil War - Proposal for Four-Nation Peace-Keeping Force," 22 (January 1976).

"Consolidation of Control by Fretilin - Indonesian Warnings to Fretilin," 22 (January 1976).

"Further Indonesian Attacks on East Timor - Change in Australian Attitude to Indonesia - Rome Talks between Portugal and Indonesia," 22 (January 1976).

"Declaration of Independence by Fretilin and of Merger with Indonesia by Pro-Indonesian Parties;" 22 (January 1976).

"Indonesian Invasion of East Timor - Severance of Diplomatic Relations by Portugal" 22 (January 1976).

"Provisional Government Formed by Pro-Indonesian Forces," 22 (January 1976).

"Recognition of MPLA Government by OAU and Other Countries," 22 (April 1976).

"New Co-operation Agreements with France – Continued Activities by Rebels – The Clauster Affair," 22 (May 1976).

"Incorporation into Indonesia," 22 (August 1976).

"Invasion Launched from Angola by Former Katangese," 23 (June 1977).

"Invasion of Shaba Province," 23 (June 1977).

"Conflicting Reactions among African Countries - Condemnation of French Action by Angola, Cuba and the Soviet Union," 23 (June 1977).

"Allegations of French Involvement," 24 (May 1978).

"Invasion of Shaba Province by Rebels - Arrival of French and Belgian Paratroops," 24 (August 1978).

"Franco-African Conference of Heads of State or Government - Moves towards Formation of African Peace-keeping Force," 24 (August 1978).

"Allegations of Cuban and Soviet Involvement in Invasion – Cuban and Soviet Denials – Suspension of Zaire's Relations with Soviet Union, Libya and Algeria," 24 (August 1978).

"31st Meeting of Council of Ministers," 24 (October 1978).

"Assembly of Heads of State and Government," 24 (October 1978).

"Resurgence of Rebel War – French Support for Chad National Army," 25 (January 1979).

"Visit of President of Afghanistan to Soviet Union - Signing of Treaty of Friendship, Good-neighbourliness and Co-operation – Agreement on Establishment of Commission for Economic Co-operation," 25 (February 1979).

"Vietnamese Invasion of Cambodia – Uprising led by United Front – Fall of Phnom-Penh," 25 (May 1979).

"Reactions in Communist Countries," 25 (May 1979).

"Reactions in ASEAN Countries," 25 (May 1979).

"October 1978 Invasion of Tanzanian Territory by Uganda –International Reactions" 25 (June 1979).

"Tanzanian Military Action Against Uganda," 25 (June 1979).

"Continued Mediation Efforts," 25 (June 1979).

"Recognition of Lule Government by Other Countries," 25 (June 1979).

"Overthrow of Emperor Bokassa by Mr Dacko - Re-establishment of Republic - French Role in Coup," 25 (November 1979).

"Internal Security and Political Developments," 26 (February 1980).

"Airlift of Soviet Troops into Afghanistan – Overthrow of President Amin," 26 (May 1980).

"President Brezhnev's Statement on International Situation," 26 (May 1980).

"Large-scale Libyan Intervention," 27 (February 1981).

"23rd European Council Meeting in Brussels," 28 (August 1982).

"12th Congress of League of Communists," 28 (August 1982).

"French and Zairean Aid to Habre Government FANT Counter-Offensive," 29 (December 1983).

"Civil War in North Libyan, French and Zairean Involvement," 29 (December 1983).

"Formation of French Defensive Line in 'Operation Manta', French Diplomatic Contacts With Libya," 29 (December 1983).

"Suspension and Subsequent Restoration of Relations with Libya," 29 (December 1983).

"Military Coup – Intervention by US and Caribbean Forces," 30 (January 1984).

"Background to the Coup," "Removal of Mr. Bishop – Establishment of Revolutionary Military Council – Reactions from other Caribbean States," 30 (January 1984).

"Removal of Mr.Bishop – Establishment of Revolutionary Military Council – Reactions from other Caribbean States," 30 (January 1984).

"Controversy over Nature and Timing of Requests by Caribbean Leaders and Governor - General for Intervention," 30 (January 1984).

"US Justification for Intervention," 35 (December 1989).

"US Invasion and Installation of Endara Government" and "Inauguration of President Endara – Confirmation of Election Results," 35 (December 1989).

"International Reactions to Invasion," 35 (December 1989).

"Suppression of Rebellion," 36 (January 1990).

"Increasing Scale of Revolt," 36 (April 1990).

"Rebel Successes Advance Into Monrovia," 36 (July 1990).

"Civil War - Sending of ECOWAS Force - Large-scale Casualties," 36 (August 1990).

"The Kurdish Crisis," 37 (April 1991).

"Further Setbacks to Political Reform," 37 (May 1991).

"National Conference," 37 (July 1991).

"National Conference," 37 (August 1991).

"Foreign Intervention," 37 (September 1991).

"Dismissal of Prime Minister," 37 (October 1991).

"Rival Governments Formation of New Cabinet," 37 (November 1991).

"Threat of Deaths Through Mass Starvation," 38 (August 1992).

"Evidence of Worsening Famine," 38 (September 1992).

"Obstacles to UN Efforts," 38 (October 1992).

"US Offer of Military Intervention," 38 (November 1992).

"US-led Military Intervention," 38 (December 1992).

"Progress of US-led Military Operations," 38 (December 1992).

"Death of President – Renewed Violence," 40 (April 1994).

"Carnage After President's Death," 40 (April 1994).

"International Reaction,"40 (April, 1994).

"Humanitarian Crisis," 40 (May 1994).

"FPR Advances Ceasefire Attempts - Report by UN Special Rapporteur," 40 (June 1994).

"Failure to Deploy UNAMIR II – French Intervention," 40 (June 1994).

"Continuing Massacres and Civil War - Deployment of French 'Humanitarian' Force," 40 (June 1994).

"Launch of 'Operation Turquoise'," 40 (June 1994).

"French Security Area," *Keesing's* 40 (July 1994).

"Military Coup," 43 (May 1997).

"International Reaction to Coup," 43 (May 1997).

"Chaotic Aftermath of Military Coup," 43 (June 1997).

"Installation of Koroma as President," 43 (June 1997).

"Chaotic Aftermath of Military Coup," 43 (June 1997).

"Annual Summit," *Keesing's* 43 (August 1997).

"Ongoing Conflict in Kosovo," 44 (January 1998).

"Start of Violence," 44 (January 1998).

"Serious Unrest in Kosovo," 44 (January 1998).

"Continued Serb Crackdown," 44 (March 1998).

"Immediate Reaction to Killings," 44 (March 1998).

"Imposition of UN's Arms Embargo on FRY – Other Sanctions," 44 (April 1998).

"Other Kosovo Developments" (May 1998).

"Continued Violence in Kosovo" (July 1998).

"Serbian Military Offensive in Kosovo" (July 1998).

"Continued Fighting in Kosovo" (August 1998).

"Show of Force by NATO" (August 1998).

"Protests Over Violence – Show of Force by NATO" (July 1998).

"Preparations for Military Strikes – Diplomatic Efforts" (October 1998).

"Rombouillet Peace Talks" 45 (February 1999).

"Events Prior to Second Round of Peace Talks" 45 (March 1999).

"Second Round of Peace Talks" 45 (March 1999).

"Deterioration in Security Situation" 45 (March 1999).

"Final Holbrooke Mission" 45 (March 1999).

"Launch of Operation Allied Force" 45 (March 1999).

"NATO Air-strikes on Yugoslavia" 45 (March 1999).

"Expansion of UN Force," 46 (February 2000).

"Breakdown of Peace Agreement," 46 (May 2000).

"Action by UN Troops," 46 (July 2000).

"Security Developments," 46 (August 2000).

APPENDIX I

MAIN PRINCIPLES IN THE GENERAL ASSEMBLY DECLARATIONS

AND

ASSEMBLY RESOLUTIONS INVOKING THESE PRINCIPLES

PRINCIPLES	DECLARATIONS	RESOLUTIONS
Duty to refrain from intervention/ Obligation not to intervene in the internal and external affairs of the any other state/Duty not to intervene in matters within the domestic jurisdiction of any State	• Draft Declaration on the Rights and Duties of States (1949) • Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the UN (1970) • Declaration on the Strengthening of International Security (1970) • Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of the States (1981) • Manila Declaration on the Peaceful Settlement of International Disputes (1982)	• USSR – Hungary (1956) • UK – Jordan (1958) • US – Lebanon (1958) • Belgium – Congo (1960) • Turkey – Cyprus (1974) • Vietnam – Cambodia (1978-1979) • USSR – Afghanistan (1979) • US – Grenada (1983) • US – Nicaragua (1981-1986) • US – Panama (1989)
Force of arms not be resorted to and used against the territorial integrity or political independence of any state	• Duties of States in the Event of the Outbreak of Hostilities (1950)	• USSR – Hungary (1956) • Vietnam – Cambodia (1978-1979) • USSR – Afghanistan (1979) • US – Grenada (1983) • US – Panama (1989)

Condemning intervention of a State in the internal affairs of another State for the purpose of overthrowing its legally established government by the threat or use of force/Condemning armed intervention and all other forms of interference against political, economic and cultural elements of a State	• Peace Through Deeds (1950) • Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty (1965) • Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the UN (1970) • Inadmissibility of the policy of Hegemonism in International Relations (1979) • Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of the States (1981)	• USSR – Hungary (1956) • Indonesia – East Timor (1975) • Vietnam – Cambodia (1978-1979) • USSR – Afghanistan (1979) • US – Grenada (1983) • US – Panama (1989)
Respect for sovereignty, equality and territorial integrity and non-intervention in one another's internal affairs	• Peaceful and Neighbourly Relations Among States (1957) • Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of the States (1981)	• UK – Jordan (1958) • US – Lebanon (1958) • Belgium – Congo (1960) • Turkey – Cyprus (1974) • Indonesia – East Timor (1975) • Vietnam – Cambodia (1978-1979) • USSR – Afghanistan (1979) • Israel – Lebanon (1982) • US – Grenada (1983) • US – Panama (1989)

APPENDIX II

UN REACTION TO MILITARY INTERVENTIONS

REACTION	SECURITY COUNCIL	GENERAL ASSEMBLY
Condemnation	• Indonesia – East Timor (1975) • Cuba/South Africa – Angola (1976) • Israel – Lebanon (1982)	• USSR – Hungary (1956) • Belgium – Congo (1960) • Indonesia – East Timor (1975) • Vietnam – Kampuchea (1978-1979) • USSR – Afghanistan (1979) • Israel – Lebanon (1982) • US – Grenada (1983) • US – Panama (1989)
Define as Aggression	• Cuba/South Africa – Angola (1976)	
Define as Grave/Critical Situation	• UK/France – Egypt (1956) • USSR – Hungary (1956)	• UK/France – Egypt (1956) • USSR – Hungary (1956) • Belgium – Congo (1960) • Indonesia – East Timor (1975)
Impose Sanctions (Chapter VII)	• Liberia (1990) • Demanded Chp. VII action in Kosovo (NATO – FRY, 1999) • ECOWAS – Sierra Leone (1997)	
Appeal to Regional Organizations (Chapter VIII)	• ECOWAS – Liberia (1990) • ECOWAS – Sierra Leone (1997)	

Commend the intervention	• ECOWAS – Liberia (1990) • ECOWAS – Sierra Leone (1997)	
Refer as Foreign Intervention		• USSR – Hungary (1956) • Belgium – Congo (1960) • USSR – Afghanistan (1979) • US – Grenada (1983) • US – Panama (1989)
Define as threat to international peace and security	• Belgium – Congo (1960) • India – Eastern Pakistan (Bangladesh) (1971) • Turkey – Cyprus (1974) • Situation in Liberia (ECOWAS – Liberia, 1990) • Repression of civilian population in Iraq and its consequences (US/Allied Powers – Iraq, 1991) • Situation in Kosovo (NATO – FRY, 1999) • Situation in Sierra Leone (ECOWAS – Sierra Leone, 1997)	• Belgium – Congo (1960) • India – Eastern Pakistan (Bangladesh) (1971) • Turkey – Cyprus (1974) • Vietnam – Kampuchea (1978-1979)
Define as likely to threaten international peace and security/Concerned with the implications for international peace and security	• Israel – Lebanon (1982)	• USSR – Afghanistan (1979)
Desist/Refrain from any form of intervention in the internal affairs	• US/Belgium – Congo (1964)	• USSR – Hungary (1956) • Turkey – Cyprus (1974)

General reference to non-interference in internal affairs	• Cuba/South Africa – Angola (1976) • US – Nicaragua (1981-1986)	• UK – Jordan (1958) • US – Lebanon (1958) • Vietnam – Kampuchea (1978-1979) • USSR – Afghanistan (1979) • US – Grenada (1983) • US – Nicaragua (1981-1986) • US – Panama (1989)
Demand to end intervention/Cessation of intervention	• Turkey – Cyprus (1974) • Israel – Lebanon (1982)	• US – Grenada (1983) • US – Panama (1989)
Demand withdrawal of all foreign forces	• Belgium – Congo (1960) • India – Eastern Pakistan (Bangladesh) (1971) • Indonesia – East Timor (1975) • Israel – Lebanon (1982) • Withdrawal of FRY forces from Kosovo (NATO – FRY, 1999)	• UK/France – Egypt (1956) • USSR – Hungary (1956) • UK – Jordan (1958) • US – Lebanon (1958) • Belgium – Congo (1960) • Turkey – Cyprus (1974) • Indonesia – East Timor (1975) • Vietnam – Kampuchea (1978-1979) • USSR – Afghanistan (1979) • Israel – Lebanon (1982) • US – Grenada (1983)
Demand ceasefire	• US – Dominican Republic (1965) • India – Eastern Pakistan (Bangladesh) (1971) • Israel – Lebanon (1982)	• UK/France – Egypt (1956) • India – Eastern Pakistan (Bangladesh) (1971) • Israel – Lebanon (1982)
Demand an end to the internal situation	• Iraq (US/Allied Powers – Iraq, 1991)	• Iraq (US/Allied Powers – Iraq, 1991)

Naming the responsible party	• USSR/Hungary (1956) • Belgium – Congo (1960) • Indonesia – East Timor (1975) • Cuba/South Africa – Angola (1976) • Israel – Lebanon (1982) • US – Nicaragua (1981-1986) ?	• UK/France – Egypt (1956) • USSR – Hungary (1956) • Belgium – Congo (1960) • India – Eastern Pakistan (Bangladesh) (1971) • Indonesia – East Timor (1975) • Israel – Lebanon (1982) • US – Nicaragua (1981-1986) • US – Panama (1989)
Not naming the responsible party	• UK/France – Egypt (1956) • US/Belgium – Congo (1964) • US – Dominican Republic (1965) • India – Eastern Pakistan (Bangladesh) (1971) • Turkey – Cyprus (1974)	• UK – Jordan (1958) • US – Lebanon (1958) • Turkey – Cyprus (1974) • Vietnam – Kampuchea (1978-1979) • USSR – Afghanistan (1979) • US – Grenada (1983)
Non-Reaction	• UK – Sultanate Of Muscat and Oman (1957) • UK – Jordan (1958) • US – Lebanon (1958) • India – Goa (1961) • France – Gabon (1964) • USSR/Warsaw Pact – Czechoslovakia (1968) • France – Chad (1968) • Israel – Uganda (1976) • France/Morocco – Zaire (1977) • France/Belgium – Zaire (1978) • France – Chad (1978) • Vietnam – Kampuchea (1978-1979)	• UK – Sultanate of Muscat and Oman (1957) • India – Goa (1961) • France – Gabon (1964) • US/Belgium – Congo (1964) • US – Dominican Republic (1965) • USSR/Warsaw Pact – Czechoslovakia (1968) • France – Chad (1968) • Cuba/South Africa – Angola (1976) • Israel – Uganda (1976)

	• Tanzania – Uganda (1978-1979) • France – Central Africa (1979) • Libya – Chad (1979-1980) • USSR – Afghanistan (1979) • US – Grenada (1983) • France/Zaire – Chad (1983) • US – Panama (1989) • US – Liberia (1990) • France/Belgium – Zaire (1991) • UK – Sierra Leone (2000)	• France/Morocco – Zaire (1977) • France/Belgium – Zaire (1978) • France – Chad (1978) • Tanzania – Uganda (1978-1979) • France – Central Africa (1979) • Libya – Chad (1979-1980) • France/Zaire – Chad (1983) • US – Liberia (1990) • ECOWAS – Liberia (1990) • US/Allied Powers – Iraq (1991) • France/Belgium – Zaire (1991) • ECOWAS – Sierra Leone (1997) • NATO – FRY (1999) • UK – Sierra Leone (2000)

APPENDIX III

UN AUTHORIZED INTERVENTIONS

REACTION	SECURITY COUNCIL	GENERAL ASSEMBLY
Define as threat to international peace and security	• Situation in Southern Rhodesia (1965) • Situation in Somalia (1992) • Humanitarian Crisis in Rwanda (1994)	
Impose Sanctions/Military Measures (Chapter VII)	• Southern Rhodesia (1965) • Authorizing the UK (Southern Rhodesia, 1965) • Somalia (1992) • Authorizing Member States (UNITAF – Somalia, 1993) • Authorizing France (France – Rwanda, 1994)	• Calls upon UK to take all possible measures (Southern Rhodesia, 1965)
Appeal to Regional Organizations (Chapter VIII)	• Calls upon Organization of African Unity to assist the implementation (Southern Rhodesia, 1965) • ECOWAS – Liberia (1990) • ECOWAS – Sierra Leone (1997)	
Non-reaction		• UNITAF – Somalia (1992) • France – Rwanda (1994)